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Nonimmigrant (Temporary) Admissions to the United States: Policy and Trends

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Summary

U.S. law provides for the temporary admission of foreign nationals, who are known as nonimmigrants. Nonimmigrants are admitted for a designated period of time and a specific purpose. There are 24 major nonimmigrant visa categories, which are commonly referred to by the letter and numeral that denote 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-5 law enforcement witnesses and informants.

A U.S. Department of State (DOS) consular officer (at the time of application for a visa) and a Department of Homeland Security (DHS) inspector (at the time of application for admission) must be satisfied that an 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 applying for nonimmigrant status abroad) and DHS inspectors (when the alien is entering the United States) must also determine that the alien is not ineligible for a visa under the INA's "grounds for inadmissibility," which include criminal, terrorist, and public health grounds for exclusion.

In FY2016, DOS consular officers issued 10.4 million nonimmigrant visas, down from a peak of 10.9 million in FY2015. There were approximately 8 million tourism and business visas, which comprised more than three-quarters of all nonimmigrant visas issued in FY2016. Other notable groups were temporary workers (883,000, or 8.5%), students (513,000, or 4.9%), and cultural exchange visitors (380,000, or 3.7%). Visas issued to foreign nationals from Asia made up 45% of nonimmigrant visas issued in FY2016, followed by North America (20%), South America (17%), Europe (11%), and Africa (5%).

U.S. Customs and Border Protection (CBP) inspectors approved 181.3 million temporary admissions of foreign nationals to the United States during FY2016. CBP data enumerate arrivals, thus counting frequent travelers multiple times. Mexican nationals with border crossing cards and Canadian nationals traveling for business or tourist purposes accounted for the vast majority of admissions, representing approximately 104.7 million entries in FY2016. In FY2015, California and Florida were the top two destination states for nonimmigrant visa holders, with each state being listed as the destination for more than 10 million nonimmigrant admissions. In addition, 10 other states and the territory of Guam were listed as the destination for more than 1 million nonimmigrant admissions each in that year.

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

Contents

Introduction 1
Admission of Nonimmigrants 2
Periods of Admission 2
Length of Stay 2
Duration of Visa 2
Employment Authorization 3
Permission to Work 3
Labor Market Tests 3
Exclusion and Removal 4
Inadmissibility 4
Presumption of the Intent to Settle Permanently 4
Termination of Nonimmigrant Status 5
Broad Categories of Nonimmigrants 5
Diplomats and Other International Representatives 5
Visitors as Business Travelers and Tourists 5
Temporary Workers 7
Multinational Corporate Executives and International Investors 8
Exchange Visitors 9
Foreign Students 9
Family-Related Visas 10
Law Enforcement-Related Visas 10
Aliens in Transit and Crew Members 10
Statistical Trends 10
Analysis of Nonimmigrants by Visa Category 11
Temporary Visas Issued 11
Temporary Admissions 14
Analysis of Nonimmigrants by Region 17
Temporary Visas Issued 17
Temporary Admissions 19
Analysis of Nonimmigrants by Destination 21
Estimates of the Resident Nonimmigrant Population 22
Pathways to Permanent Residence 23
Nonimmigrant Visa Overstays 25

Figures

Figure 1. Nonimmigrant Visas Issued by Category, FY2016 12
Figure 2. Nonimmigrant Visas Issued, FY2007-FY2016 13
Figure 3. “Other Than B” Visas Issued, FY2007-FY2016 14
Figure 4. I-94 Nonimmigrant Admissions by Category, FY2015 15
Figure 5. Visa Waiver Program Admissions FY2006-FY2015 16
Figure 6. “Other than B Visa” Nonimmigrant Admissions, FY2006-FY2015 17
Figure 7. Nonimmigrant Visas Issued by Region, FY2016 18
Figure 8. Trends in Nonimmigrant Visas Issued by Region, FY2007-FY2016 19

Figure 9. Nonimmigrant Admissions by Region, FY2015 20
Figure 10. Trends in Nonimmigrant Admissions by Region, FY2006-FY2015 21
Figure 11. Nonimmigrant Admissions by State of Destination, FY2015 22
Figure 12. Top Sending Countries of Estimated Resident Nonimmigrants in 2014 23

Tables

Table A-1. Descriptions, Requirements, Limits, and FY2016 Issuances for Nonimmigrant Visas 26

Appendixes

Appendix. Delineating Current Law for Nonimmigrant Visas 26

Contacts

Author Information 40

Introduction

The United States has long distinguished temporary migration from settlement migration.[1] The Immigration and Nationality Act (INA) establishes the circumstances under which foreign nationals may be admitted temporarily or come to live permanently.[2] Those admitted on a permanent basis are known as immigrants, or lawful permanent residents (LPRs), while those admitted on a temporary basis are known as nonimmigrants. The INA provides for the admission of nonimmigrants for designated periods of time and a variety of specific purposes. Nonimmigrants include tourists, foreign students, diplomats, temporary agricultural workers, cultural exchange visitors, internationally known entertainers, foreign media representatives, intracompany business personnel, and crew members on foreign vessels, among others.

Policy discussions about nonimmigrant admissions are as varied as the visa classes under which temporary migrants enter. Tourists, business visitors, and foreign students, for example, are usually seen as a boon to the U.S. economy, while the economic costs and benefits of temporary workers are hotly debated. In addition, cultural exchange programs are a foreign policy tool, intended to foster democratic principles and spread American values across the globe, but some of these programs that include work authorization have come under scrutiny for an alleged lack of protections for both U.S. workers and program participants. Further, the entry of nonimmigrants has prompted national security concerns—particularly over those who enter under the Visa Waiver Program. Debates also continue over the implementation of a system to document the exits of foreign nationals from the United States, as nonimmigrants who remain in the country after their visas expire are accounting for a growing share of the unauthorized alien[3] population.

Achieving an optimal balance among policy priorities—ensuring national security, facilitating trade and commerce, supporting fair labor practices, protecting public health and safety, and fostering international cooperation—remains a challenge. As policymakers consider modifying nonimmigrant visa categories, they may be interested in learning more about each of the categories and their relationship to the policy priorities. This report explains the statutory and regulatory provisions that govern nonimmigrant admissions to the United States before turning to a description of the major nonimmigrant categories. It describes trends in temporary migration, including changes over time in the number of nonimmigrant visas issued and nonimmigrant admissions. Estimates of nonimmigrants who establish residence in the United States are briefly discussed, as are estimates of those who stay beyond their authorized period of admission. The report concludes with a detailed table showing key admissions requirements across all nonimmigrant visa types.

[1] The Immigration Act of 1924 (P.L. 68-139) recognized immigrants as those coming to settle in the United States and provided for the following classes of temporary migrants: accredited officials of foreign governments, their families, and employees; tourists and business visitors; aliens in transit; crewmen; treaty traders; students; and representatives of international organizations.

[2] For an overview of the permanent immigration system see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[3] "Alien" is the term used in law and is defined as anyone who is not a citizen or national of the United States. (A U.S. "national" is a person owing permanent allegiance to the United States and includes citizens. Noncitizen nationals are individuals who were born either in American Samoa or on Swains Island to parents who are not citizens of the United States.) In this report, the terms "migrant," "alien," and "foreign national" are used interchangeably.

Admission of Nonimmigrants

The Department of State (DOS), the Department of Homeland Security (DHS), and the Department of Labor (DOL) each play key roles in administering the law and setting policies on the admission of nonimmigrants. Foreign nationals living outside the United States who wish to enter the country apply for a visa at a U.S. embassy or consulate abroad. Two agencies within DHS handle the admission procedures that occur on U.S. soil: Customs and Border Protection (CBP) determines whether to admit nonimmigrants at U.S. ports of entry (POEs), and U.S. Citizenship and Immigration Services (USCIS) handles applications for extending or changing an individual's nonimmigrant status and the adjudication of visa petitions by employers for nonimmigrant workers. For certain classes of workers, an employer must first submit an application to DOL's Office of Foreign Labor Certification. If approved, the employer petitions USCIS for the visa on behalf of the worker. Finally, DOS interviews the worker and issues a visa if conditions are met.

A DOS consular officer (at the time of application for a visa) and a CBP immigration inspector (at the time of application for admission) must be satisfied that an alien is entitled to a 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.

Periods of Admission

The time period that a visa lasts has two elements: how long the foreign national is authorized to stay in the United States, and how long the visa is valid for entry into the United States.

Length of Stay

Section 214 of the INA and 8 C.F.R. §214 address length and extensions of stay for the various classes of nonimmigrants. For example, A-1 ambassadors are allowed to remain in the United States for the duration of their service, F-1 students for the duration of their studies, D crew members for up to 29 days, and R-1 religious workers for 30 months (with the possibility of extension for an additional 30 months).[4] H-1B visa holders may stay in the country for three years with the option to renew once for up to six years total. 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 a visa. (See the **Appendix** for requirements for each visa type.) Nonimmigrants who remain in the United States past their lawful period of admission are known as overstays.

Duration of Visa

Separate from the length of stays authorized for nonimmigrant visas is their validity period, or the time during which the visa is valid for travel. These time periods are negotiated country-by-country and category-by-category. For example, a B visitor visa from Germany is valid for 10 years while a B visa from Indonesia is valid for five years. The D crew member visa is valid for five years for Egyptians, but two years for Russians. R-1 visas have a validity period of 36 months for Ugandans and 60 months for Italians. The country-specific validity periods generally reflect reciprocal authorizations of validity periods for U.S. citizens who travel to those countries.

[4] Nonimmigrant visa categories are commonly referred to by the letter (and sometimes also the numeral) that denote their subsection in the Immigration and Nationality Act (INA).

DOS publishes frequent updates to reciprocity agreements and explanations of how they affect different visa classes.[5]

Employment Authorization

Permission to Work

With the exception of the nonimmigrants who are temporary workers (i.e., H, O, P, R, and Q visa holders), treaty traders (i.e., E visa holders), international representatives (i.e., A and G visa holders), or the executives of multinational corporations (i.e., L visa holders), most nonimmigrants are not allowed to work in the United States. Exceptions to this policy are noted in the **Appendix**. Working without authorization is a violation of law and results in the termination of nonimmigrant status.

Labor Market Tests

Labor market tests are required for employers petitioning for workers under the H visa classes, E-3 professional worker visas for Australians, and D crewmember visas. The H-2 visas require employers to complete the labor certification process, which includes applying to DOL for certification that there are not sufficient U.S. workers who are able, willing, qualified, and available to perform the needed work, and that admitting alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.[6] As part of the labor certification process, employers must offer wages at or above specified levels and meet various other requirements.[7]

The labor market test required for H-1 and E-3 workers, known as labor attestation, is less stringent than labor certification. Any employer wishing to bring in an H-1B or E-3 nonimmigrant must attest in an application to DOL that the employer will pay the nonimmigrant the greater of the actual compensation paid to 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 at the place of employment.[8]

The D visa is for crewmembers working on sea vessels or international airlines but typically does not allow the visa holder to perform longshore work. There are a few exemptions. If an employer is requesting authorization for a D visa holder to perform longshore work via one of these exemptions, the employer must attest that the use of alien crewmembers to perform longshore work is the prevailing practice for the activity at that port, there is no strike or lockout at the place of employment, and notice of the attestation has been given to U.S. workers or their representatives.[9]

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[5] U.S. Department of State, "Reciprocity and Civil Documents by Country," at https://travel.state.gov/content/visas/en/fees/reciprocity-by-country.html.

[6] INA §212(a)(5), 8 U.S.C. §1182(a)(5), 20 C.F.R. §655. Also see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[7] For details on H-2A and H-2B wage rules, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[8] 8 C.F.R. §214.2; 20 C.F.R. §655. Also see CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

[9] 20 C.F.R. §655.500 (b)(1).

There are no labor market tests for foreign nationals seeking to enter under the other employment-related visas.

Exclusion and Removal

Inadmissibility

DOS consular officers (when the alien is applying abroad), CBP inspectors (when the alien is at a United States port of entry), and USCIS adjudicators (when the alien is applying for an extension or adjustment of status) must confirm that the alien is not ineligible for a visa under the "grounds for inadmissibility" found in §212(a) of the INA.[10] These grounds fall into the following categories:

- health-related grounds,
- criminal history,
- security and terrorist concerns,
- public charge (e.g., indigence),
- seeking to work without proper labor certification,
- illegal entrants and immigration law violations,
- lacking proper documents,
- permanently ineligible for citizenship,
- aliens previously removed, and
- miscellaneous (including polygamists, child abductors, and unlawful voters).

The law provides for waivers of these grounds (except for most of the security and terrorist-related grounds) for nonimmigrants on a case-by-case basis.[11]

Presumption of the Intent to Settle Permanently

Section 214(b) of the INA generally presumes that all aliens seeking admission to the United States are coming to settle permanently; as a result, most foreign nationals seeking to qualify for nonimmigrant visas must demonstrate that they are not coming to reside permanently.[12] The §214(b) presumption is the most common basis for rejecting nonimmigrant visa applications, accounting for three quarters of ineligibility findings in FY2016.[13] There are three nonimmigrant

[10] Immigration and Customs Enforcement (ICE) in DHS operates the Visa Security Program, which deploys special agents to diplomatic posts worldwide to prevent fraud and identify terrorist or criminal suspects. Other agencies that are involved in inadmissibility determinations are the Department of Labor's Office for Foreign Labor Certification and the Department of Health and Human Services' Centers for Disease Control and Prevention.

[11] INA §212(a).

[12] The burden of proof is on the alien to demonstrate to the consular officer that he or she is entitled to nonimmigrant status and that his or her intended activities are consistent with the status for which he or she is applying. (Department of State, 9 Foreign Affairs Manual (FAM) § 401.1-3(E)). For nonimmigrant classes that require maintenance of a residence abroad, "the applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin." (Department of State 9 FAM §401.1-3(F)(2)).

[13] Department of State, *Report of the Visa Office 2016*, 2017, Table XX, https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXX.pdf. For historical data trends on this topic, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*.

visas for which "dual intent" is allowed, meaning that the prospective nonimmigrant visa holder may simultaneously seek LPR status. Nonimmigrants seeking H-1B visas (professional workers), L visas (intracompany transferees), or V visas (accompanying family members)[14]are exempt from the requirement that they prove they are not coming to the United States to live permanently.

Termination of Nonimmigrant Status

Nonimmigrants who violate the terms of their visas—such as working without authorization—or stay beyond the period of admission are considered unauthorized aliens. As such, they are subject to removal. The legal status of a nonimmigrant in the United States may also be terminated for national security, public safety, or diplomatic reasons, or following the conviction of a crime of violence that has a sentence of more than one year (i.e., a felony).[15]

Broad Categories of Nonimmigrants

Currently, there are 24 major nonimmigrant visa categories and more than 80 specific types of nonimmigrant visas. Most of the nonimmigrant visa categories are defined in §101(a)(15) of the INA. For most nonimmigrant visa categories, there are specific visas for derivatives, typically dependent spouses and minor children, of the principal visa holder. In this section, nonimmigrant visas are grouped under broad labels. For a listing of all the current visa types in alphabetical order, see **Table A-1** in the **Appendix**. For each visa type, it provides information from current law and regulations regarding length of stay, foreign residence requirements, employment authorization, labor market test requirements, annual numerical limit, and the number of visas issued in FY2016.

Diplomats and Other International Representatives

Ambassadors, consuls, and other official representatives of foreign governments (and their immediate family and personal employees) enter the United States on A visas. Official representatives of international organizations (and their immediate family and personal employees) are admitted on G visas. Nonimmigrants entering under the auspices of the North Atlantic Treaty Organization (NATO) have their own visa category, called NATO (or N 1-7).

Visitors as Business Travelers and Tourists

B-1 nonimmigrants are visitors who travel to the United States for business-related purposes such as negotiating a contract, consulting with business associates, or attending a professional conference. To be classified as a visitor for business, an alien must receive his or her salary from abroad, must maintain a foreign residence, and must not receive any remuneration from a U.S. source other than an expense allowance or reimbursement for other expenses incidental to the temporary stay.

B-2 visas are granted to temporary visitors for "pleasure," otherwise known as tourists. Examples of acceptable activities include visiting family or friends, vacationing, and seeking medical

[14] K visas—for fiancé(e)s of U.S. citizens—are treated like immigrant visas by the Department of State and therefore are also exempt in practice from this requirement. 22 C.F.R. §41.81(d). For more information on the K visa, see CRS Report R44310, *The K-1 Fiancé(e) Visa: In Brief*.

[15] 8 C.F.R. §214.1.

treatment. Tourists have consistently been the largest nonimmigrant class of admission to the United States. A B-2 visa holder may not engage in any employment in the country.

Those who wish to travel to the United States for a combination of business and pleasure may obtain a combined B-1/B-2 visa. B visas usually allow for multiple entries and may remain valid for up to 10 years, depending on the applicable Department of State reciprocity schedule. B visa holders are typically admitted to the United States for a period of stay up to six months.[16]

Visa Waiver Program

Many business travelers and tourists enter the United States without visas through the Visa Waiver Program (VWP).[17] This provision of the INA (§217) allows the Secretary of Homeland Security to waive the visa documentary requirements for visitors from countries that meet certain statutory criteria.[18] Currently, 38 countries are designated under the VWP, allowing their nationals to visit the United States for up to 90 days without a visa.[19] Although not part of the Visa Waiver Program, citizens of Canada and Bermuda who wish to travel to the United States as business visitors or tourists may do so without a visa.[20]

Border Crossing Card

The border crossing card (BCC), or "laser visa," allows Mexican citizens who reside in Mexico to gain short-term entry to the United States border zone for business or tourism.[21] It may be used for multiple entries and is typically valid for 10 years. Mexican citizens can be granted a laser visa if they are found to be otherwise admissible as B-1 (business) or B-2 (pleasure) nonimmigrants. The laser visa is a combined B-1/B-2/BCC nonimmigrant visa.[22] Current rules limit the BCC holder to visits of up to 30 days within designated border zones in Texas, California, New Mexico, and Arizona.[23]

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[16] Validity periods and number of authorized entries vary by country and generally reflect reciprocal authorizations of validity periods for U.S. citizens who travel to those countries. DOS publishes frequent updates to reciprocity agreements and explanations of how they affect different visa classes. See U.S. Department of State, "Reciprocity and Civil Documents by Country," at https://travel.state.gov/content/visas/en/fees/reciprocity-by-country.html.

[17] See CRS Report RL32221, *Visa Waiver Program*.

[18] These include reciprocity for U.S. citizens traveling to those countries, low nonimmigrant visa refusal rates, issuance of electronic/biometric passports, official information sharing, and law enforcement cooperation. In addition, nationals of VWP countries who have traveled to Iran, Iraq, Libya, Sudan, Syria, Somalia, and Yemen since March 1, 2011, are ineligible, as are those who are nationals of a VWP country and also nationals of Iran, Iraq, Sudan, or Syria. See CRS Report RL32221, *Visa Waiver Program*.

[19] These countries are Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungry, Iceland, Ireland, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom.

[20] A separate program is in place for Guam and the Commonwealth of the Northern Mariana Islands (CNMI). The Guam-CNMI Visa Waiver Program covers admission only to Guam and the CNMI, and 12 countries currently qualify (see 8 C.F.R. §212.1 (q)).

[21] It became known as a laser visa when it began including a photograph and finger scan as biometric identifiers in the late 1990s.

[22] The combined B-1/B-2/BCC may be issued in the form of a stand-alone laminated card (BBBCC) or a "Lincoln Foil" (BBBCV) affixed to the Mexican passport. **Table A-1** in the Appendix lists these separately because the State Department separates them in its visa issuance data.

[23] The designated border zone in Texas and California is 25 miles; in New Mexico, 55 miles; and in Arizona, 75 miles. In certain instances specified in 8 C.F.R. §235.1(h), BCC entry is limited to 72 hours.

Temporary Workers

The major nonimmigrant category for temporary workers is the H visa. The current H-1 category includes workers in specialty occupations (H-1B visa holders), which, at a minimum, require the attainment of a bachelor's degree or its equivalent.[24] Current law sets numerical restrictions on the number of visas that may be issued annually to new H-1B workers at 65,000 with an additional 20,000 for applicants holding a U.S. master's degree or higher. Most H-1B workers enter on visas that are exempt from this cap, however. Exemptions apply to workers who are renewing their visas or are petitioned for by an institution of higher education, or a nonprofit or government research institution.[25]

There are two visa categories for bringing in seasonal or temporary workers; agricultural workers enter on H-2A visas, and nonagricultural workers enter on H-2B visas.[26] Annually, the Secretary of Homeland Security designates countries eligible to participate in the H-2 programs.[27] There is no annual numerical limit on the admission of H-2A workers, and the annual limit for the H-2B visa is 66,000.[28]

H-3 visas are issued to nonimmigrants coming for the purpose of job-related training that is unavailable in their countries of origin and that relates to work that will be performed outside the United States.

The E-3 treaty professional visa is a temporary work visa limited to citizens of Australia. It is similar to the H-1B visa in that the foreign worker in the United States on an E-3 visa must be employed in a specialty occupation.[29]

Temporary professional workers who are citizens of Canada or Mexico may enter on TN visas according to terms set by the North American Free Trade Agreement (NAFTA). TN visas are approved for those in certain professions to work in prearranged business activities for U.S. or foreign employers.[30]

Persons with extraordinary ability in the sciences, arts, education, business, or athletics, or with extraordinary recognized achievements in the motion picture and television fields are admitted on O visas. Extraordinary ability means a level of expertise indicating that the person has risen to the very top of the field of endeavor and is nationally or internationally acclaimed.[31]

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[24] The regulations define "specialty occupation" as requiring theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, law, accounting, business specialties, theology and the arts, and requiring the attainment of a bachelor's degree or its equivalent as a minimum. Law and regulations also specify that fashion models deemed "prominent" may enter on H-1B visas. See 8 C.F.R. §214.2(h).

[25] See CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

[26] See CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[27] Ibid.

[28] On July 19, 2017, an additional 15,000 H-2B visas were made available to "American businesses which attest that they will likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition." The one-time increase expires at the end of the fiscal year (September 30, 2017). See https://www.uscis.gov/working-united-states/temporary-workers/one-time-increase-h-2b-nonimmigrant-visas-fy-2017

[29] Section 501 of P.L. 109-13, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005. See also CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

[30] A list of eligible professions—typically requiring a bachelor's degree at the entry level—are listed in Appendix 1603.D.1 of NAFTA Chapter 16.

[31] 8 C.F.R. §214.2(o).

Internationally recognized athletes or members of an internationally recognized entertainment group coming to the United States to compete or perform enter on P visas. An individual or team athlete, or an entertainer on a P-1 visa must have achieved significant international recognition. There are also P visas for performers in reciprocal cultural exchange programs and culturally unique performers, as well as for persons providing essential support services for these performers.

Foreign nationals who work for foreign media companies enter on I visas. Nonimmigrants 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 is recognized as a religious occupation within the denomination. Q visas are issued to participants in employment-oriented cultural exchange programs whose stated purpose is to provide practical training and employment as well as share history, culture, and traditions. USCIS must approve the Q cultural exchange programs. Unlike the J cultural exchange program (see "Exchange Visitors"), employers must petition for nonimmigrants under the Q visa program.

In 2011, a transitional worker visa category for foreign workers in the Commonwealth of the Northern Mariana Islands (CNMI), a U.S. territory, was established.[32] Employers of nonimmigrant workers who are ineligible for other employment-based nonimmigrant visa classifications under the INA can apply for temporary permission to employ workers in the CNMI under the CW visa classification. The CW visa program is scheduled to end on December 31, 2019. Foreign workers in the CNMI under the CW visa program are expected to find a suitable alternative immigration status before the end of the program if they wish to remain in the CNMI lawfully.[33]

Multinational Corporate Executives and International Investors

International intracompany transferees who work in an executive or managerial capacity or have specialized knowledge are admitted to the United States on L visas.[34] The L visa enables multinational firms to transfer top-level personnel to their locations in the United States for five to seven years. To be eligible for an L-1 visa, the foreign national must have worked for the multinational firm abroad for one year prior to transferring to a U.S. location.

Treaty traders and investors (and their spouses and children) may enter the United States on E-1 or E-2 visas. To qualify, a foreign national must be a citizen or national of a country with which the United States maintains a treaty of commerce and navigation.[35] The foreign national also 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

[32] On May 8, 2008, the Consolidated Natural Resources Act of 2008 (P.L. 110-229) extended most provisions of U.S. immigration law to the CNMI for the first time in history. The transition period for implementing U.S. immigration law in the CNMI began on Nov. 28, 2009, and is scheduled to end on Dec. 31, 2019. The CW visa classification provides a method for transition from the former CNMI foreign worker permit system to the U.S. immigration system. For more information, see U.S. Citizenship and Immigration Services, "CW-1: CNMI-Only Transitional Worker," at https://www.uscis.gov/working-united-states/temporary-workers/cw-1-cnmi-only-transitional-worker.

[33] U.S. Citizenship and Immigration Services, "CNMI Transitional Worker Classification Questions and Answers," at https://www.uscis.gov/laws/immigration-commonwealth-northern-mariana-islands-cnmi/cnmi-transitional-worker-classification-questions-and-answers.

[34] See also CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

[35] For the list of countries that qualify, see U.S. Department of State, "Treaty Countries, " at https://travel.state.gov/content/visas/en/fees/treaty.html.

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."[36] Unlike most nonimmigrant visas, the E visa may be renewed indefinitely. The E-2C visa is for treaty traders (and their spouses and children) working in the CNMI only.

Exchange Visitors

The J visa, also known as the Fulbright program, is used by professors and research scholars, students, foreign medical graduates, teachers, resort workers, camp counselors, au pairs, and others who are participating in an approved exchange visitor program. DOS's Bureau of Educational and Cultural Affairs is responsible for approving the cultural exchange programs, which must be designed to promote the interchange of persons, knowledge, and skills in the fields of education, arts, and science. J visa holders are admitted for the duration of the cultural exchange program and may be required to return to their home country for two years after completion of the program.[37] Many foreign nationals on J-1 visas are permitted to work as part of their cultural exchange program participation.

Foreign Students

While some foreign students enter the U.S. on J-1 visas, the most common visa for foreign students is the F-1 visa. It is tailored to international students pursuing full-time academic education or language training. To obtain an F-1 visa, a prospective student must be accepted by a school that has been approved by the U.S. government to enroll foreign students. Prospective students must also document that they have sufficient funds or have made other arrangements to cover all their expenses for the entire course of study. Finally, they must demonstrate that they have the scholastic preparation to pursue a full course of study at the appropriate academic level and a sufficient knowledge of English (or have made arrangements with the school for special tutoring or to study in a language they know). Students on F visas are permitted to work in practical training that relates to their degree program, such as paid research and teaching assistantships. They are also permitted to engage in Optional Practical Training (OPT), which is temporary employment that is directly related to the student's major area of study.

Students who wish to pursue a non-academic (e.g., vocational) course of study apply for M visas. Much like F visa applicants, those seeking an M visa must show that they have been accepted by an approved school, have the financial means to pay for tuition and expenses and otherwise support themselves during the course of study, and have the requisite scholastic preparation and language skills. Canadian and Mexican nationals who commute to school in the United States enter on F-3 (academic) or M-3 (vocational) visas; they are permitted to work only in practical training that relates to their degree program.

[36] 8 U.S.C. §101(a)(15)(E).

[37] The two-year home country physical presence requirement applies when the program that the J visa holder participated in was sponsored by the U.S. government or a foreign government, the J visa holder entered the United States to obtain graduate medical education or training, or the J visa holder is a national of a country that has deemed the field of specialized knowledge or skill necessary to the development of the country. See https://travel.state.gov/content/visas/en/study-exchange/exchange.html. The Conrad 30 Waiver Program allows for the waiver of this requirement for medical doctors who agree to work full-time for three years in a medically underserved area of the United States. While doing so, the doctor is in H-1B status. Upon completion of this requirement, the doctor and his or her dependents are eligible to apply for permanent residence or an H or L visa. See https://www.uscis.gov/working-united-states/students-and-exchange-visitors/conrad-30-waiver-program.

Family-Related Visas

Fiancé(e)s of U.S. citizens may obtain K-1 visas. The intending bride and groom must demonstrate that they are both legally free to marry, meaning any previous marriages must have been legally terminated by divorce, death, or annulment; that they plan to marry within 90 days of the date the K-1 visa holder is admitted to the United States; and that they have met in person during the two years immediately prior to filing the petition. Following the marriage, the K-1 visa holder may apply to adjust to LPR status. Eligible children of K-1 visa applicants can immigrate to the United States under a K-2 visa.

To shorten the time that families are separated, spouses who are already married to U.S. citizens, as well as the spouse's children, may obtain K-3 and K-4 visas, respectively. The K-3 and K-4 visas allow the spouse and children to enter the United States and become authorized for employment while waiting for USCIS to process their immigrant petitions. Once admitted to the United States, K-3 nonimmigrants may apply to adjust to LPR status at any time, and K-4 nonimmigrants may do so concurrently or any time after their parent has done so.

V visas are similar to K-3 and K-4 visas except that the sponsoring relative is an LPR rather than a U.S. citizen. No new V visas have been issued since 2007, but individuals are still admitted to the United States on V visas.[38]

Law Enforcement-Related Visas

The law enforcement-related visas are among the most recently created. The S visa is issued to informants in criminal and terrorist investigations. Victims of human trafficking who participate in the prosecution of those responsible may receive a T visa.[39] The U visa protects crime victims who assist law enforcement agencies' efforts to investigate and prosecute domestic violence, sexual assault, and other qualifying crimes.[40]

Aliens in Transit and Crew Members

The C visa is for a foreign national traveling through the United States en route to another destination (including the United Nations Headquarters District in New York). The D visa is for an alien crew member on a vessel or aircraft. A combination C-1/D visa is issued to a foreign national traveling to the United States as a passenger to join a ship or aircraft as a worker.

Statistical Trends

DOS and CBP collect data on nonimmigrant visa issuances and nonimmigrant admissions to the United States, respectively. Both sets of data have strengths and shortcomings for analyzing trends related to nonimmigrants.

[38] To be eligible for a V visa, the petition for LPR status must have been filed on or before December 21, 2000, and the relative must have been waiting at least three years since then. No new V visas have been issued since 2007 because priority dates for those applicants have been current since then, but individuals continue to enter the country on V visas received prior to 2007.

[39] For more information, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*.

[40] For more information, see CRS Report R42477, *Immigration Provisions of the Violence Against Women Act (VAWA)*.

Data from DOS on the number of visas issued shows the *potential* number of foreign nationals who may gain admission to the United States because not all visa recipients end up traveling to the country, and some who do are denied admission.

Most CBP admissions data come from I-94 forms, which are used to document entries of foreign nationals into the United States.[41] These data enumerate arrivals, thus counting frequent travelers multiple times.[42] Notably, Mexican nationals with border crossing cards and Canadian nationals traveling for business or tourist purposes are not required to fill out I-94 forms and are thus not reflected in CBP data tables. Because Canadian and Mexican visitors make up the vast majority of nonimmigrant admissions, less than half of nonimmigrant admissions to the United States each year are included in the I-94 totals.

Data on nonimmigrant departures are much less complete because the United States does not have a comprehensive exit system in place. Nonimmigrants may overstay their visas, depart the country without submitting a departure form, gain the right to live in the United States permanently, or receive an extension of their nonimmigrant stay, making a direct count of nonimmigrants in the country impossible.[43] Nevertheless, recent improvements in data sharing have allowed DHS to produce estimates of nonimmigrants residing in the United States and overstay rates for nonimmigrants who entered at air or sea ports.[44]

The following sections present both visa issuance and admissions data for nonimmigrants by category and geographic region. Estimates of the number of nonimmigrants who have overstayed their visas are also presented, as are estimates of those who have (legally or otherwise) established a residence in the United States.

Analysis of Nonimmigrants by Visa Category

Temporary Visas Issued[45]

In FY2016, DOS consular officers issued 10.4 million nonimmigrant visas, down from a peak of 10.9 million in FY2015. Combined, visitor visas issued in FY2016 for tourism and business comprised by far the largest category of nonimmigrant visas: about 8 million, or 78% of the total (see **Figure 1**). Temporary workers (including H visa holders, treaty traders and investors, intracompany transferees, and representatives of foreign media) received 8.5% of all nonimmigrant visas issued in FY2016, followed by students and exchange visitors with 4.9% and 3.7%, respectively (see **Figure 1**).

[41] Form I-94 is an Arrival-Departure Record issued by CBP at a port of entry that shows the date the visitor arrived in the United States and the "Admitted Until" date, the date when the visitor's authorized period of stay expires. In 2014, CBP began collecting this information automatically from electronic travel records for visitors arriving by air or sea. Those arriving by land still complete a paper form.

[42] Multiple entries of an individual on the same day are counted as one admission.

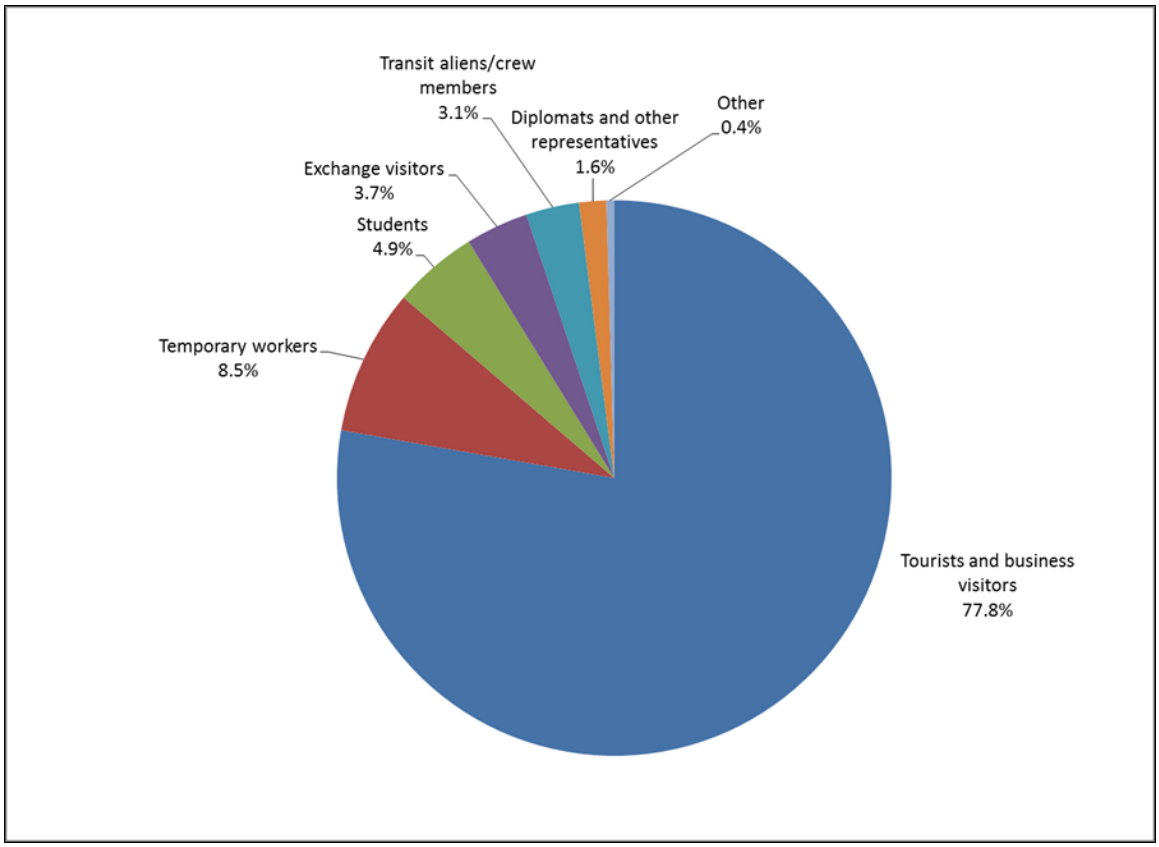
[43] Bryan Baker, *Estimates of the Size and Characteristics of the Resident Nonimmigrant Population in the United States: Fiscal Year 2014*, Department of Homeland Security, Office of Immigration Statistics, December 2016.

[44] Ibid. See also Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, Washington, DC, January 2017.

[45] Data in this section come from the Department of State's "Nonimmigrant Visa Statistics" webpage, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html, FY1997-2016 NIV Detail Table.

Figure 1. Nonimmigrant Visas Issued by Category, FY2016

10.4 million total nonimmigrant visas issued

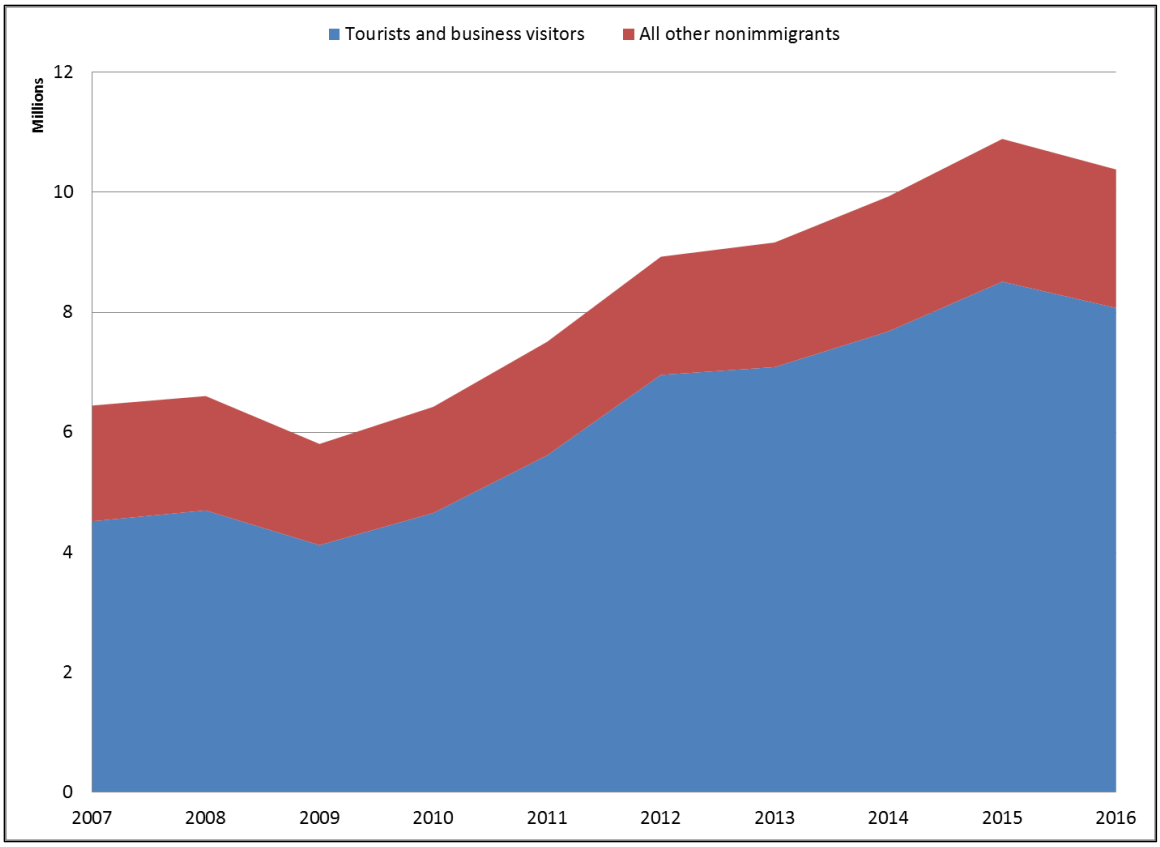


Source: CRS presentation of data from the Department of State's FY1997-2016 NIV Detail Table, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html.

Notes: All visa categories include derivatives (i.e., family, dependents). The temporary workers category includes the following visa types: CW, E, H, I, L, O, P, Q, R, TD, and TN.

From FY2007 to FY2016, the number of nonimmigrant visas issued grew by 61%, from 6.4 million in FY2007 to 10.4 million in FY2016 (see **Figure 2**). During this time, nonimmigrant visa issuances were at their lowest level in FY2009, due, in part, to the impact of the economic downturn beginning in 2007 (Great Recession) on international travel. After FY2009, there was a steady increase in the number of visas issued until FY2015; from FY2015 to FY2016, issuances declined by half a million, or 5%. The number of tourist and business visitor visas (B visas) issued increased by 78% over the entire decade, but like nonimmigrant visas overall, they saw a drop of 5% from FY2015 to FY2016.

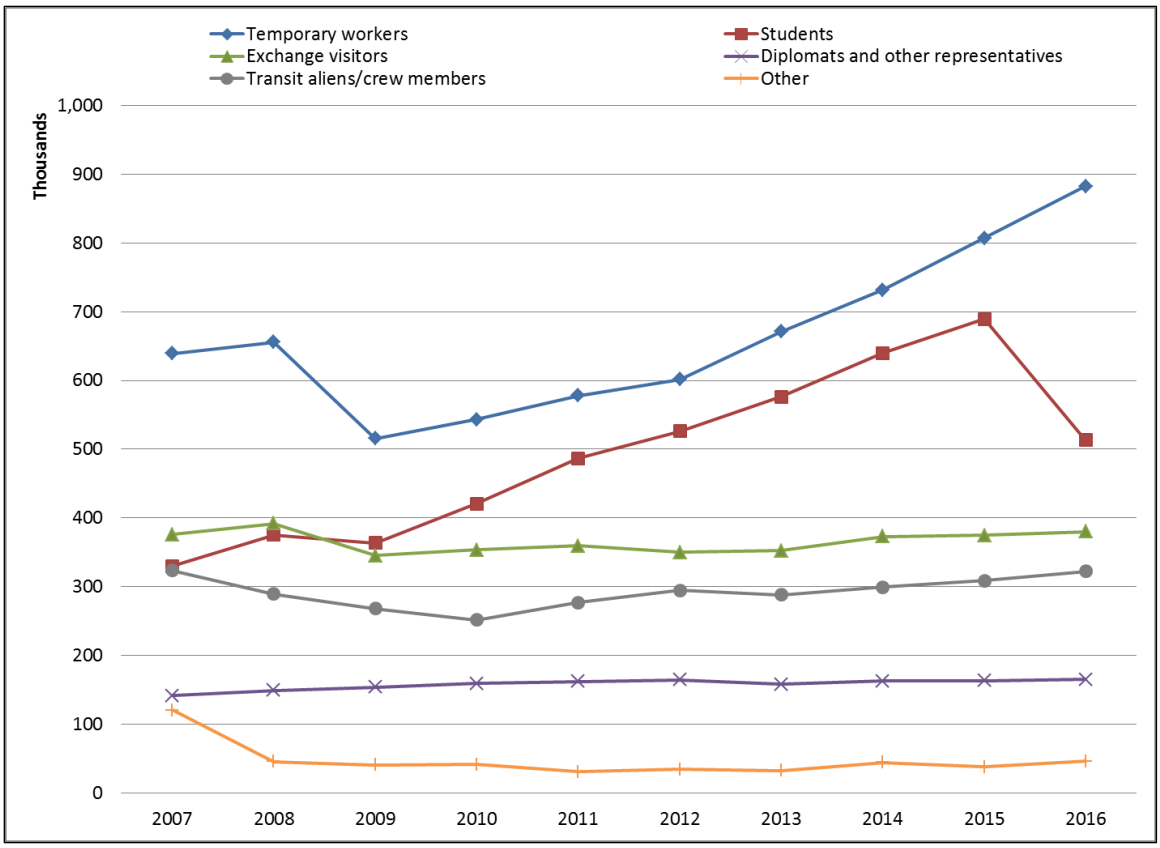
Figure 2. Nonimmigrant Visas Issued, FY2007-FY2016



Source: CRS presentation of data from the Department of State's FY1997-2016 NIV Detail Table, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html.

Because tourist and business visitor visas (B visas) dominate the nonimmigrant flow, it is useful to examine trends in other nonimmigrant categories separately. **Figure 3** reveals that the number of visas issued for temporary workers saw a sharp drop from FY2008 to FY2009. This timing coincides with the start of the Great Recession. While most other visa categories also experienced some fluctuation, visas issued to diplomats and other representatives held steady across the decade. Since FY2009, visas issued to temporary workers and students have seen large and steady increases resulting in growth rates of 38% and 55%, respectively, over the decade. From FY2015 to FY2016, however, the number of student visas experienced a 25% drop. This sharp decline was largely driven by a 46% decrease in the number of F-1 visas issued to applicants from mainland China, the most frequent recipient of F-1 visas. Saudi Arabia, Mexico, Brazil, and India also experienced steep drops in the number of F-1 visas issued from FY2015 to FY2016.

Figure 3. "Other Than B" Visas Issued, FY2007-FY2016



Source: CRS presentation of data from the Department of State's FY1997-2016 NIV Detail Table, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html.

Note: All visa categories include derivatives (i.e., family, dependents).

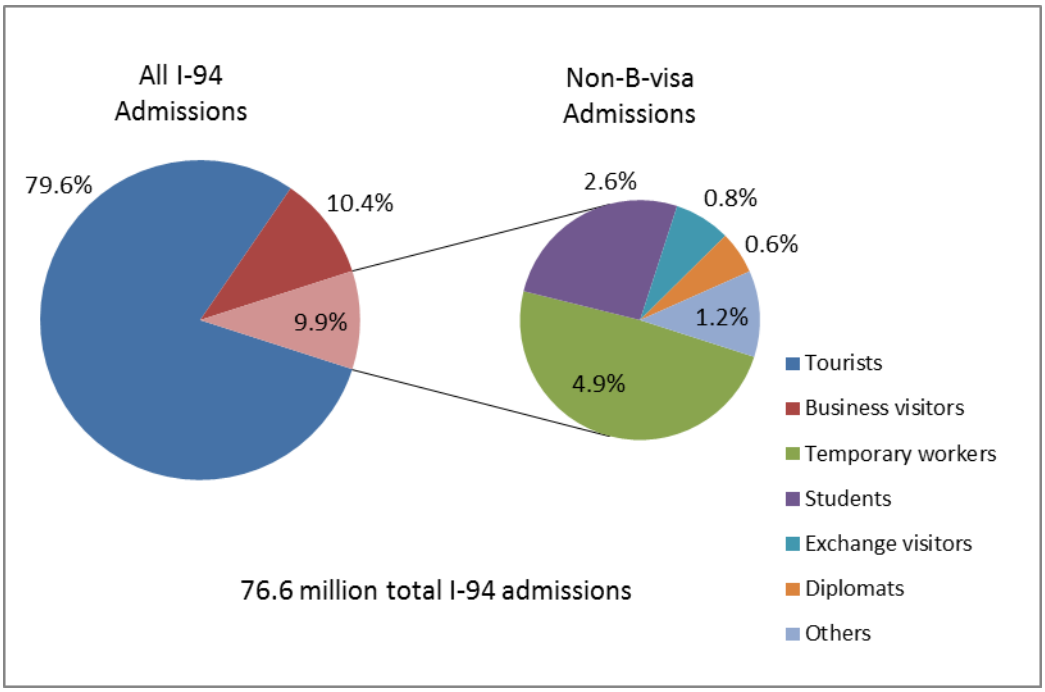
Temporary Admissions[46]

During FY2015, CBP inspectors granted 181.3 million nonimmigrant admissions to the United States, according to DHS workload estimates. Mexican nationals with border crossing cards, Canadian nationals traveling for business or pleasure, and others not required to complete a form I-94 accounted for over half (58%) of these admissions, with approximately 104.7 million entries (see "Statistical Trends"). The remaining categories and countries of the world contributed the remaining 76.6 million I-94 admissions in FY2015. The following analysis of admissions data is limited to I-94 admissions.

Total I-94 admissions more than doubled between FY2006 and FY2015, from 33.7 million to 76.6 million. The trend in admissions of temporary visitors (for business and pleasure) mirrored that for visa issuances: a decline from FY2008 to FY2009 followed by a steady increase. Because DHS has not yet released FY2016 data, it is unknown whether the FY2015 to FY2016 drop in nonimmigrant visas issued will also appear in the admissions data.

[46] Data in this section come from Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 25: FY2015, 2016.

Figure 4. I-94 Nonimmigrant Admissions by Category, FY2015



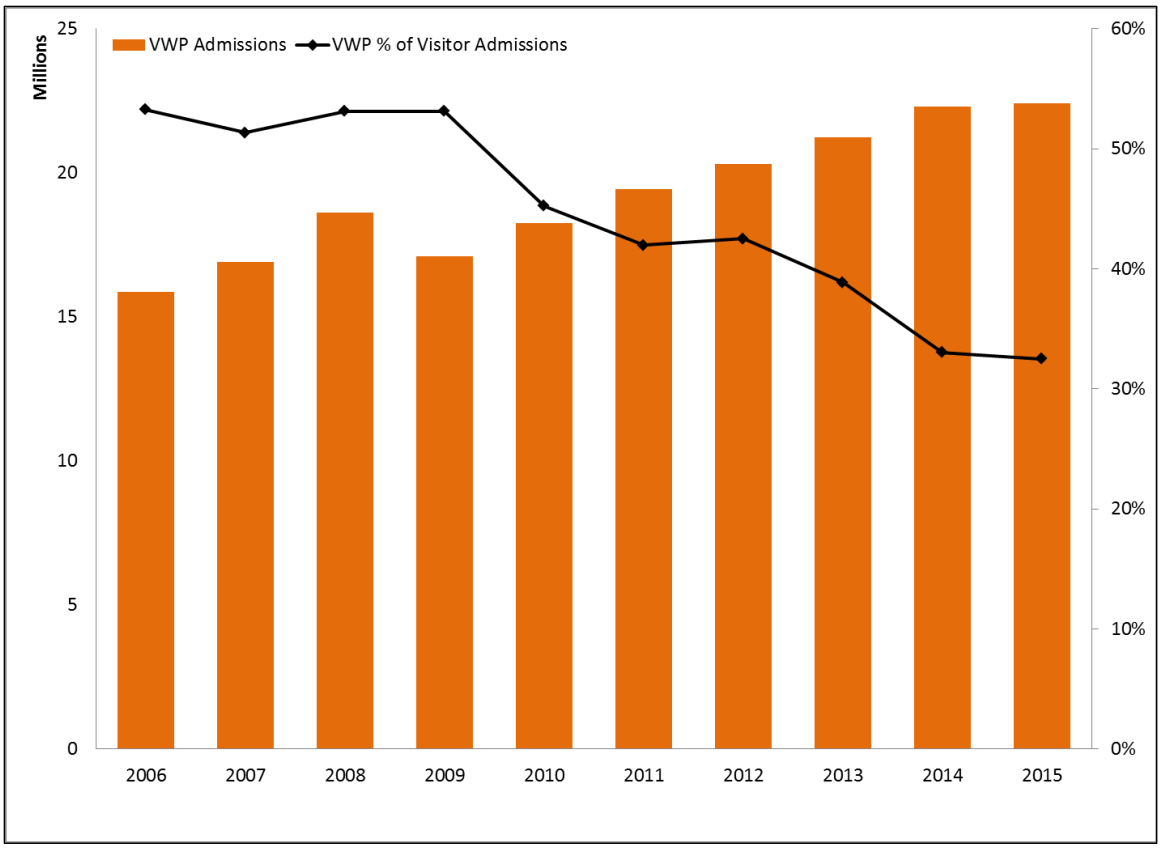
Source: CRS presentation of Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 25: FY2015, 2016.

Note: Includes I-94 admissions only. All admissions categories include derivatives (i.e., family, dependents). Categories may not sum to 100% due to rounding. B visas include tourists and business visitors.

As with the visa issuance data, tourists and business visitors dominate the admissions data (see **Figure 4)**. Over three-quarters of all I-94 admissions in FY2015 were tourists, and another 10.4% were business visitors. Similar to visa issuances, other nonimmigrant categories with measurable percentages of admissions were temporary workers (including intracompany transferees, treaty traders/investors, and representatives of foreign media), at almost 5%, students (2.6%), cultural exchange visitors (0.8%), and diplomats (0.6%).

Included in the admissions data are tourists and business visitors who entered without a visa under the Visa Waiver Program (VWP). While the number of VWP admissions has climbed steadily since FY2009, the share of visitor (B visa) admissions accounted for by VWP admissions dropped from more than half (53.2%) in FY2006 to less than one-third (32.5%) in FY2015 (see **Figure 5**). This corresponds with an increase in the share of admissions coming from Asia (see **Figure 8**), as European countries dominate the VWP.

Figure 5. Visa Waiver Program Admissions FY2006-FY2015

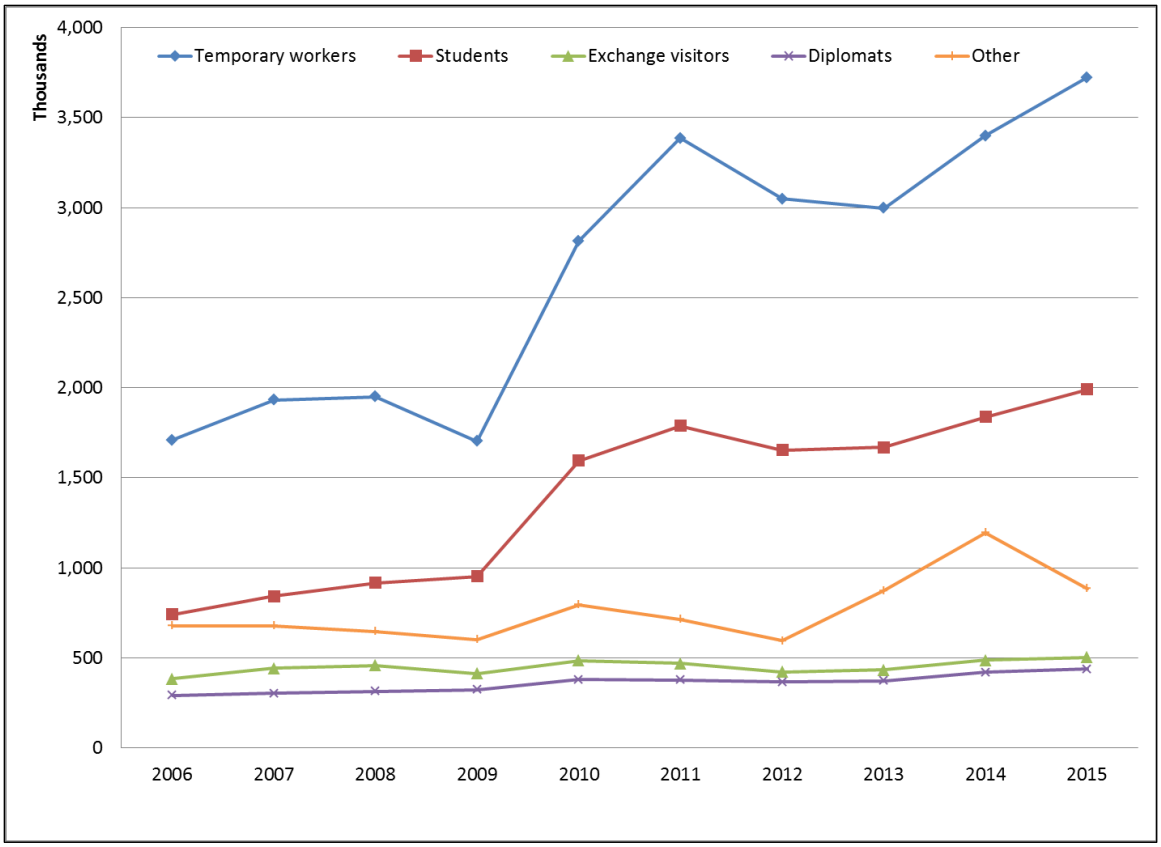


Source: CRS presentation of Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 25: FY2015, 2016.

Notes: Includes I-94 admissions only. "Visitor admissions" refers to temporary visitors for pleasure or business (i.e., those who would enter with a B visa if they were not part of the VWP).

Figure 6 shows FY2006-FY2015 admission trends for all visa types except for B visa holders. As was also shown in **Figure 4**, temporary workers are the largest category of "other than B-Visa" nonimmigrant admissions. Overall, the temporary workers category saw a 118% increase in the number of admissions from FY2006 to FY2015, second only to student admissions, which grew by 169%. Admissions of diplomats and exchange visitors grew 50% and 35%, respectively.

Figure 6. "Other than B Visa" Nonimmigrant Admissions, FY2006-FY2015



Source: CRS presentation of Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 25: FY2015, 2016.

Note: Includes I-94 admissions only. All admissions categories include derivatives (i.e., family, dependents).

Analysis of Nonimmigrants by Region

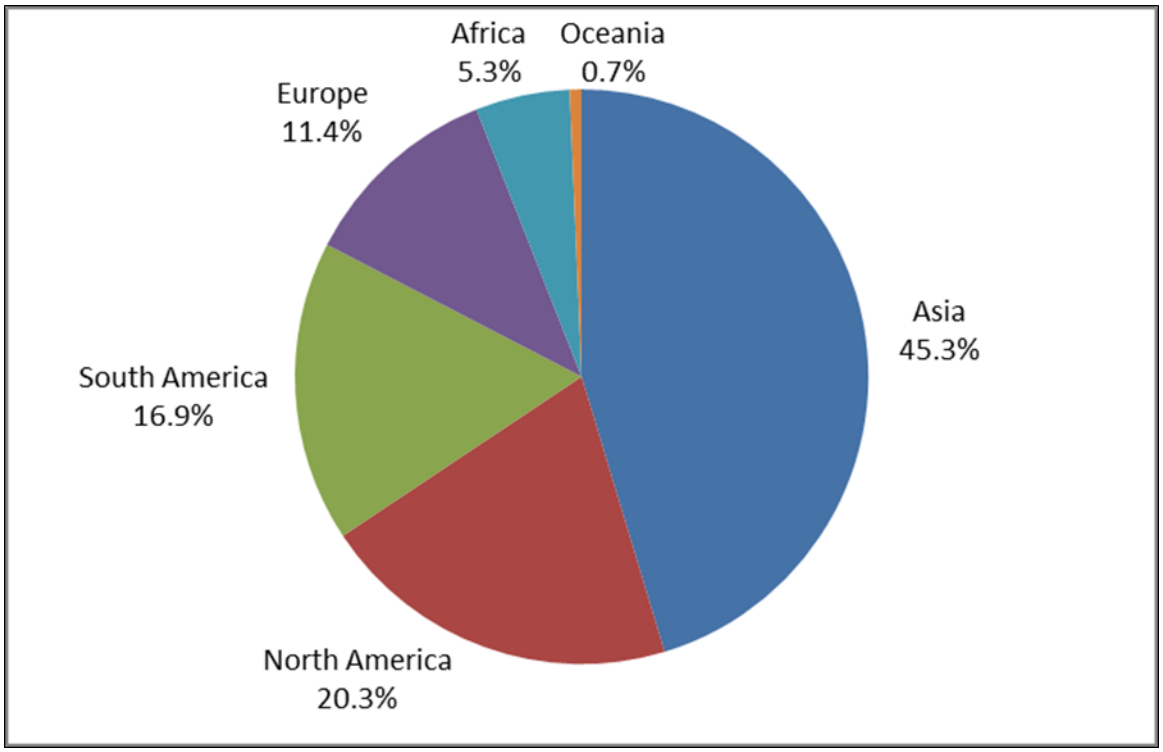
Temporary Visas Issued[47]

Visas issued to foreign nationals from Asia made up 45.3%, or 4.7 million, of the 10.4 million nonimmigrant visas issued in FY2016 (see **Figure 7**). North American nonimmigrants (i.e., those from Canada, Mexico, Central America, and the Caribbean) accounted for the next largest group of FY2016 nonimmigrant visa issuances, with 2.1 million individuals. South America accounted for 1.8 million of the nonimmigrant visa issuances. Europe's 1.2 million visas comprised 11.4% of all nonimmigrant visas issued, down from 16.1% in FY2007. Half a million nonimmigrant visas were issued to Africans, and less than 70,000 went to those from Oceania.

[47] Unless otherwise noted, data in this section come from the Department of State's "Nonimmigrant Visa Statistics" webpage, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html, FY1997-2016 NIV Detail Table.

Figure 7. Nonimmigrant Visas Issued by Region, FY2016

10.4 million total nonimmigrant visas issued



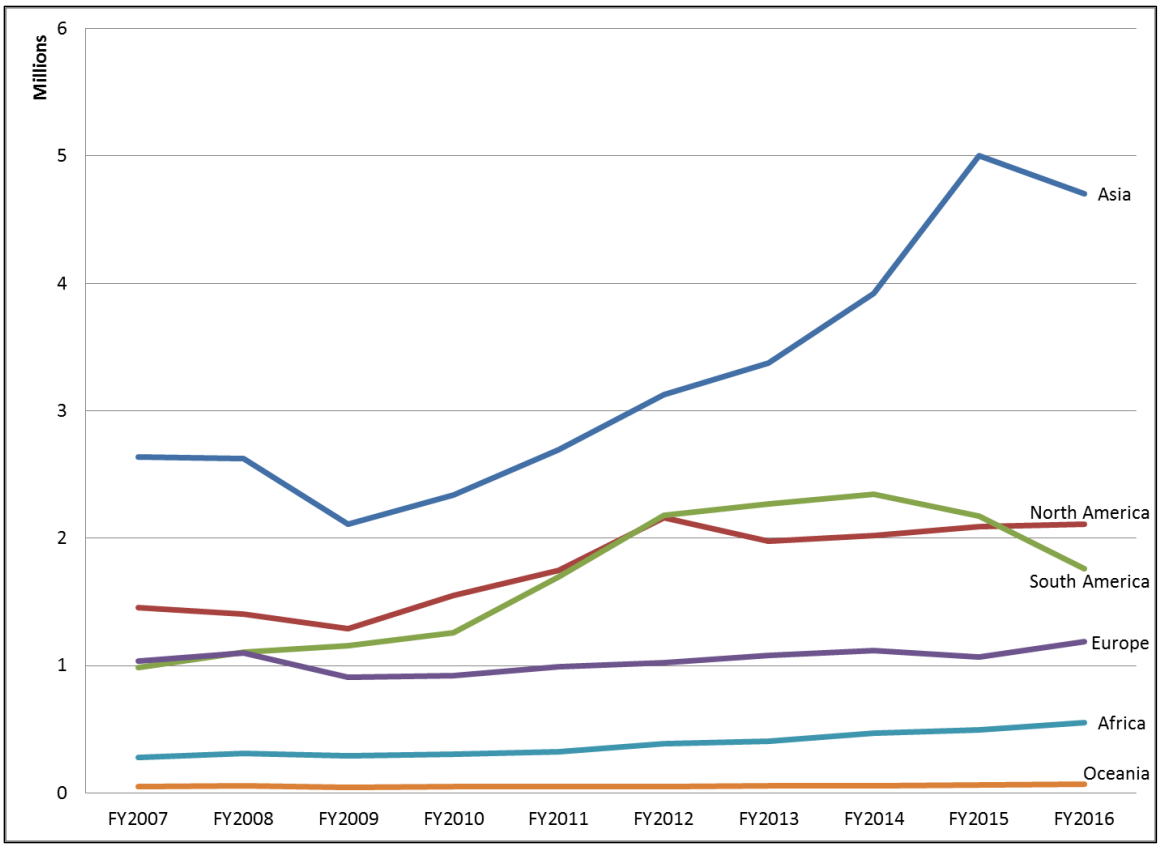
Source: CRS presentation of data from the Department of State's FY1997-2016 NIV Detail Table, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html.

Over the past decade, nonimmigrant visas issued to nationals from Asia increased 78% from 2.6 million visas issued in FY2007 to 4.7 million in FY2016 (see **Figure 8).** Although Asian nationals experienced the largest numerical increase during that time, the number of nonimmigrant visas issued to South American nationals also increased by 78%, and visas issued to African nationals doubled over the same time period, surpassing 500,000 in FY2016 for the first time.

Reflecting the decrease in total visa issuances from FY2015 to FY2016, visa issuances to nationals from Asia and South America also decreased during this time. The drop in visas issued to nationals from Asia is due almost equally to decreases in business and tourist visitors (B) and student (F-1) visas. Chinese nationals, for example, received about 237,103 fewer B visas and 126,444 fewer F-1 visas in FY2016 than in FY2015.[48] Foreign nationals from Brazil—South America's largest economy and a country suffering from a deep recession—accounted for most of the decrease in business and tourist visitor visas for South America.

[48] U.S. Department of State, Bureau of Consular Affairs, *Reports of the Visa Office 2007-2016*, at https://travel.state.gov/content/visas/en/law-and-policy/statistics/annual-reports/report-of-the-visa-office-2016.html.

Figure 8. Trends in Nonimmigrant Visas Issued by Region, FY2007-FY2016



Source: CRS presentation of data from Department of State's FY1997-2016 NIV Detail Table, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html.

Temporary Admissions[49]

Citizens of North American countries accounted for almost half (47.4%) of I-94 nonimmigrant admissions in FY2015 (see **Figure 9**).[50] In addition to sharing a border with the United States, Canadian and Mexican nationals have expedited entry in many cases.[51] Admissions of European nationals made up almost one quarter (22.6%) of FY2015 nonimmigrant admissions, followed by Asian nationals (18.3%). Citizens of South America, Oceania, and Africa each accounted for less than 10% of nonimmigrant admissions. It is worth noting that 30 of the 38 Visa Waiver Program countries are European, which, coupled with the continent's proximity to the United States, helps

[49] Data in this section come from Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 26: FY2015, 2016.

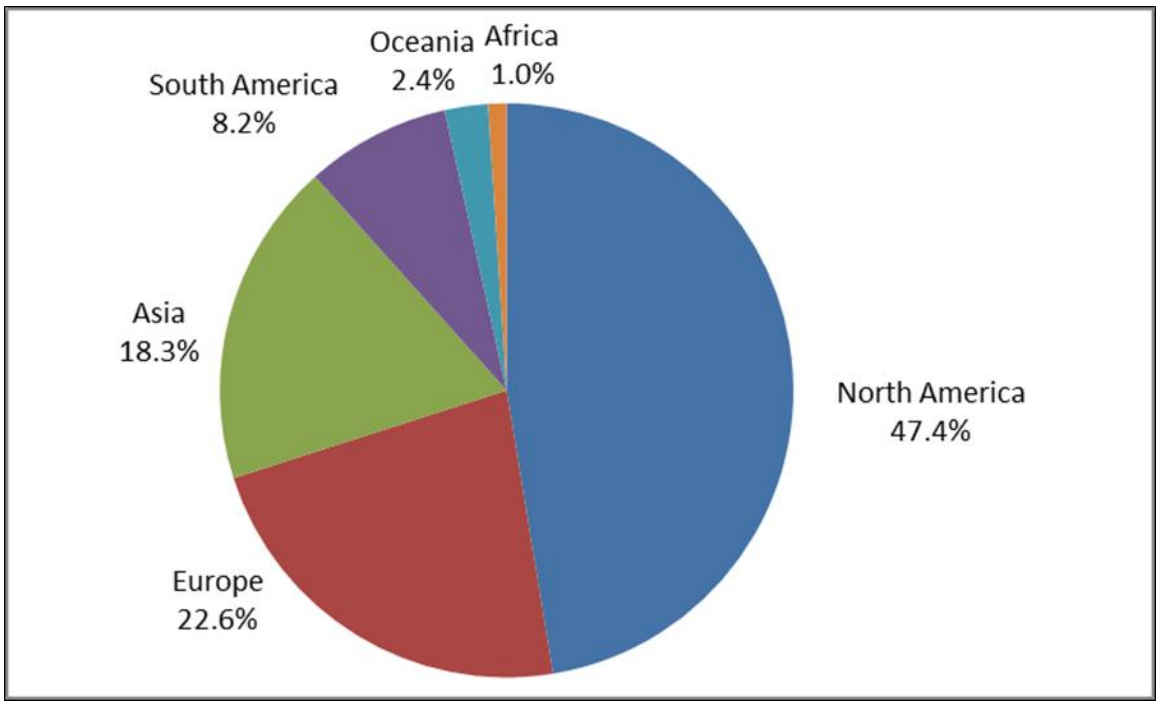
[50] These data do not incorporate millions of entries of Mexican nationals with border crossing cards and Canadian nationals traveling for business or tourist purposes who are not required to complete an I-94. Nevertheless, I-94 admissions were recorded for 20.4 million Mexican citizens and 13.4 million Canadians in FY2015. Due to modernizations at land ports of entry, I-94 data from 2010 onward greatly exceed totals from previous years due to a more complete count of land admissions. Furthermore, beginning in 2013, CBP began generating electronic I-94s for travelers at air and sea ports who may have previously not had their admission record on the form (e.g. Canadians), thus further increasing I-94 totals from North America.

[51] Canadian citizens visiting the United States for business or pleasure are not required to obtain a visa, and Mexican visitors have access to border crossing cards, which are good for multiple entries over 10 years. See "Statistical Trends" for more information.

explain how European nationals can make up almost a quarter of *admissions* but 9.8% of *visas issued* in FY2015. Although foreign nationals from Asia held 45.9% of *visas issued* in FY2015, they comprised 18.3%, or 14 million, of I-94 *admissions*. This could be due in part to the fact that only five Asian countries are designated in the VWP, along with the lower likelihood of repeat entries from Asia given its distance from the United States. Citizens from Africa, Oceania, and South America also accounted for a higher share of visas issued than admissions.

Figure 9. Nonimmigrant Admissions by Region, FY2015

76.6 million total I-94 admissions



Source: CRS presentation of Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 26: FY2015, 2016.

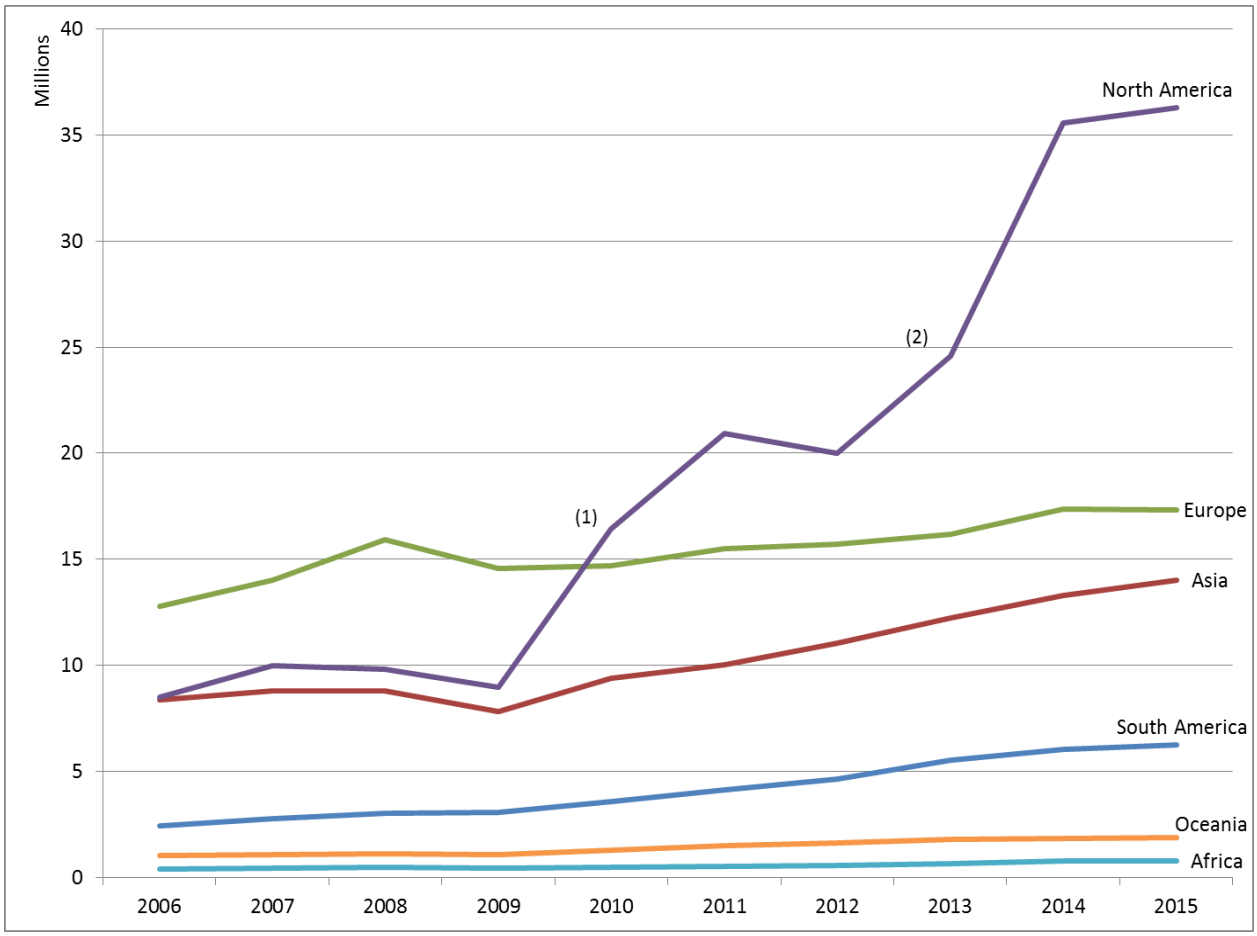
Note: Includes I-94 admissions only. These data do not incorporate millions of entries of Mexican nationals with border crossing cards and Canadian nationals traveling for business or tourist purposes who are not required to complete an I-94. Nevertheless, I-94 admissions were recorded for 20.4 million Mexican citizens and 13.4 million Canadians in FY2015.

Figure 10 depicts the region of citizenship for I-94 admissions into the United States from FY2006 to FY2015. The dramatic increase in admissions from North America is due largely to significant changes in the way CBP records I-94 admissions.[52] Before the changes in procedure, North American admissions trends mirrored those from Asia. Aside from the large increase in North American admissions that was due to improvements in data collection, admissions from South America and Africa had the fastest growth rates from FY2006 to FY2015: 157.3% and

[52] These data do not incorporate millions of entries of Mexican nationals with border crossing cards and Canadian nationals traveling for business or tourist purposes who are not required to complete an I-94. Nevertheless, I-94 admissions were recorded for 20.4 million Mexican citizens and 13.4 million Canadians in FY2015. Due to modernizations at land ports of entry, I-94 data from 2010 onward greatly exceed totals from previous years due to a more complete count of land admissions. Furthermore, beginning in 2013, CBP began generating electronic I-94s for travelers at air and sea ports who may have previously not had their admission record on the form (e.g. Canadians), thus further increasing I-94 totals from North America.

100.9%, respectively. Admissions of European nationals grew the slowest, increasing 35.6% over the decade. Asian admissions increased 67.5%, and those from Oceania grew by 78.8%.

Figure 10. Trends in Nonimmigrant Admissions by Region, FY2006-FY2015



Source: CRS presentation of Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 26: FY2015, 2016.

Notes: Includes I-94 admissions only. Mexican nationals with border crossing cards and Canadian nationals traveling for business or tourist purposes have traditionally not been counted in these I-94 admission totals. However, due to processing updates at land ports of entry, I-94 data from 2010 onward greatly exceed totals from previous years due to a more complete count of land admissions along the Northern and Southwest borders (indicated by (1) on the graph). Furthermore, beginning in 2013, CBP began generating electronic I-94s for Canadian tourists and business travelers admitted at air and sea ports who had previously been exempted from the form, thus further increasing I-94 totals from North America (indicated by (2) on the graph).

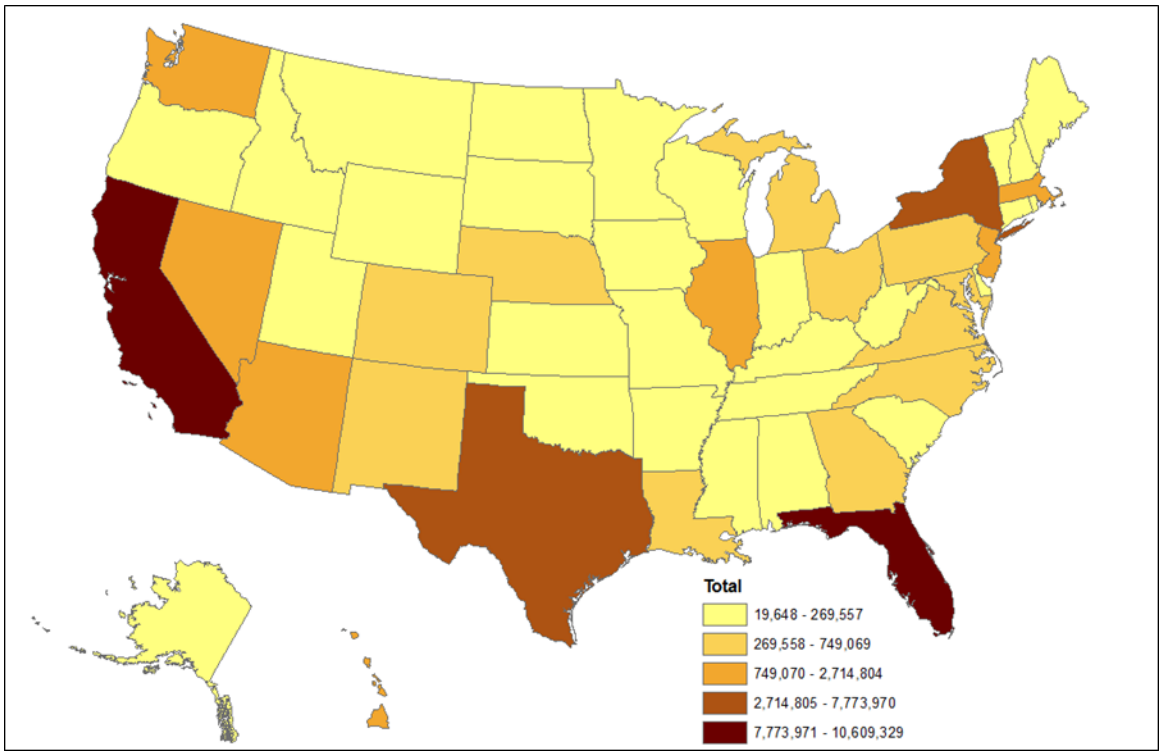
Analysis of Nonimmigrants by Destination

Foreign nationals coming to the United States as nonimmigrants go to destinations around the country.[53] Eleven states and Guam were identified as the destination for 1 million or more nonimmigrant admissions each in FY2015. California and Florida were the top two destination

[53] Destination data come from the I-94 field, "Address While in the United States" and can be interpreted in different ways by the nonimmigrant filling out the I-94 form. Nonimmigrants may list their initial or final destination, the location of their arrival airport, or may leave the field blank. As a result, these data should be interpreted with caution.

states, with over 10 million admissions each (see **Figure 11**); over 90% of these admissions were tourists and business travelers (B visa holders). New York and Texas were also top destinations for all types of nonimmigrants. Certain states and one territory stood out as primarily tourist destinations in FY2015: in Hawaii, Nevada, and Guam, more than 98% of admissions were on B visas. Other states stood out as those that attract a disproportionate share of students: in Massachusetts, students and exchange visitors accounted for 12% of admissions; California and New York had higher numbers of student/exchange visitor admissions than Massachusetts (though they made up about 4% of nonimmigrant admissions in each of these states). Michigan (19%) and New Jersey (10%) received a disproportionate share of temporary workers compared to the overall share of 5% nationwide. In addition, the District of Columbia had the highest share of nonimmigrant admissions classified as diplomats (14%).

Figure 11. Nonimmigrant Admissions by State of Destination, FY2015



Source: CRS presentation of Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 30: FY2015, 2016.

Notes: Includes I-94 admissions only. Destination data come from the I-94 field, "Address While in the United States" and can be interpreted in different ways by the nonimmigrant filling out the I-94 form. Nonimmigrants may list their initial or final destination, list the location of their arrival airport, or leave the field blank. As a result, these data should be interpreted with caution.

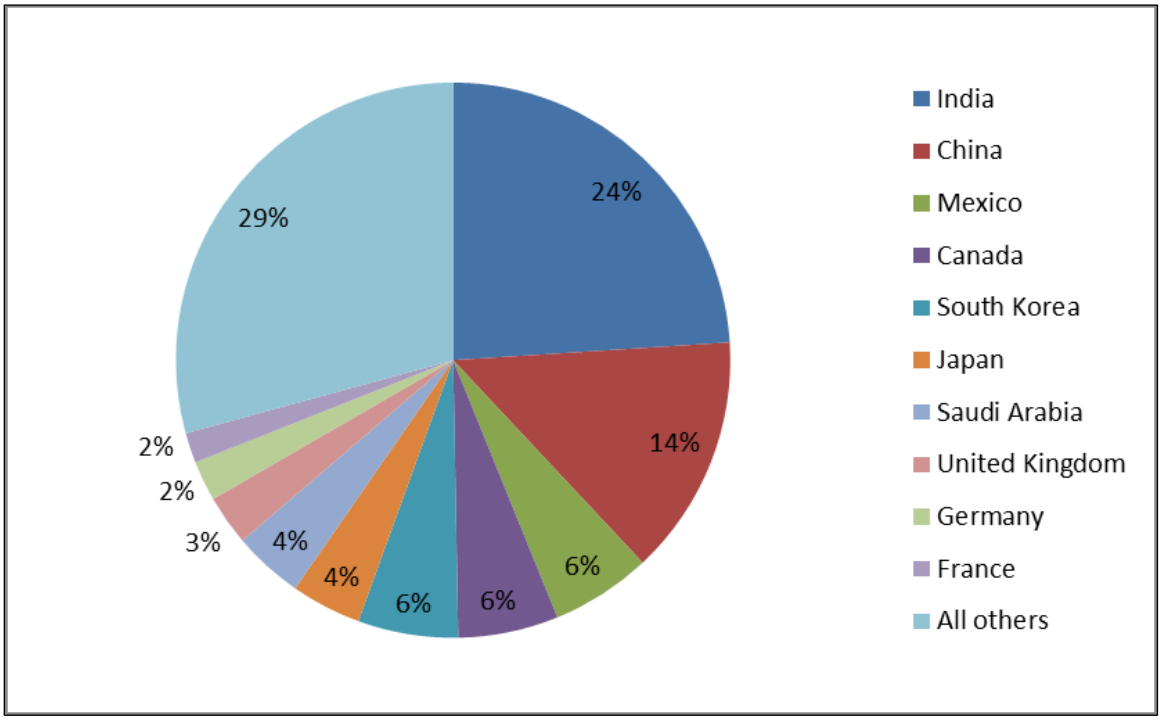
Estimates of the Resident Nonimmigrant Population

Not all nonimmigrant visas are issued for brief visits, and some lengths of stay are sufficiently long for a person to establish residence in the United States. As noted, A-1 ambassadors are allowed to remain in the United States for the duration of their service, F-1 students are allowed to complete their studies, and H-1B professionals are allowed to remain for three years or more. The term "resident nonimmigrant" refers to foreign nationals admitted on nonimmigrant visas whose classes of admission are associated with stays long enough to establish a residence.

The most recent DHS estimates of the resident nonimmigrant population in the United States are for FY2014. That year, DHS estimated the average population of resident nonimmigrants to be 1.7 million on any given day. Of these, 45.6% (790,000) were temporary workers and their families, 38.7% (670,000) were students and their families, 11.6% (200,000) were cultural exchange visitors and their families, and 4.0% (70,000) were diplomats, other representatives, and their families.[54] DHS estimated that 30% were ages 18 to 24, and 50% were ages 25 to 44. More than half (57%) of resident nonimmigrants in FY2014 were male.[55]

Foreign nationals from Asia made up more than half (56%) of resident nonimmigrants in the United States in FY2014, with India and China making up 24% and 14% of the total, respectively. Europe and North America comprised another 14% and 13% of the total, respectively. The top 10 sending countries accounted for 71% of the total, as depicted in **Figure 12.**[56]

Figure 12. Top Sending Countries of Estimated Resident Nonimmigrants in 2014



Source: CRS presentation of data from Bryan Baker, *Estimates of the Size and Characteristics of the Resident Nonimmigrant Population in the United States: Fiscal Year 2014*, Department of Homeland Security, Office of Immigration Statistics, December 2016.

Pathways to Permanent Residence

Although the U.S. immigration system is generally bifurcated into temporary and permanent admissions of foreign nationals, there are significant connections between the two. Overall, about

[54] Bryan Baker, *Estimates of the Size and Characteristics of the Resident Nonimmigrant Population in the United States: Fiscal Year 2014*, Department of Homeland Security, Office of Immigration Statistics, December 2016.

[55] Ibid.

[56] Ibid.

half of those receiving lawful permanent residence each year are adjusting to LPR status from another status within the United States, and the other half are new arrivals.[57] The adjusters may have entered the country in various capacities, including as refugees, asylees, parolees, nonimmigrants, or illegal entrants.[58]

As discussed earlier, most foreign nationals seeking to qualify for a nonimmigrant visa must demonstrate that they are not coming to the United States to reside permanently. By statute, three nonimmigrant visas permit the visa holder to simultaneously seek LPR status, also known as "dual intent": H-1 professional workers, L intracompany transfers, and V accompanying family members.[59]

The connections between the temporary and permanent immigration systems affect both employment- and family-based immigration, the two main mechanisms for permanent immigration. While about half (51.6%) of all individuals receiving LPR status in FY2015 adjusted from another status (versus new arrivals), a larger share (84.7%) of those receiving employment-based LPR status were adjusting from another status.[60] Presumably, many of these individuals were previously H-1B and L visa holders, both of which allow for immigrant intent.

The H-1B visa provides a link for foreign students to become employment-based LPRs. U.S. firms that want to hire foreign students can obtain H-1B visas for recent graduates—a process which is usually faster than sponsoring them for permanent residence—and if the employees meet expectations, the employers may also petition for them to become LPRs through one of the employment-based immigration categories. Some policymakers consider this a natural and positive chain of events, arguing that it would be foolish to educate nonimmigrants only to make them leave the country to work for foreign competitors. To that end, there have been legislative proposals to allow aliens who have earned a Ph.D. in a STEM field from a U.S. university to be exempt from numerical limits on H-1Bs and employment-based green cards.[61] Others consider this "F-1 to H-1B to LPR" pathway an abuse of the temporary element of nonimmigrant status and a way to circumvent the laws and procedures that protect U.S. workers from being displaced by immigrants. To that end, other proposals would prevent foreign students from gaining U.S. employment through the Optional Practical Training (OPT) program.[62]

OPT has become a common mechanism for temporary employment (ranging from 12 to 36 months) that is directly related to an F-1 student's major area of study.[63] In FY2014, USCIS

[57] Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 6: FY2015, 2016. For an overview of the permanent immigration system, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[58] Although USCIS asks those who are adjusting to LPR status what their last status was, there has been a data quality problem for many years. In the latest three years for which data are available (FY2014-FY2016), a quarter of records list "unknown" for previous status.

[59] §214(b) of the INA; 8 U.S.C. §1184(b). In addition, K visa holders are considered intending immigrants because they enter to marry a U.S. resident, and T and U visas allow for the possibility of adjustment to legal permanent residence.

[60] Department of Homeland Security, Office of Immigration Statistics, Yearbook of Immigration Statistics, Table 6: FY2015, 2016. For more discussion of legal permanent residence, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[61] See, for example, H.R. 2717, the STAPLE Act.

[62] See, for example, H.R. 2233, the American Jobs First Act of 2017.

[63] Generally, an F-1 student may work for up to 12 months in OPT status. In 2008, the George W. Bush Administration expanded the OPT work period to 29 months for F-1 students who have earned a degree in science, engineering, technology, or math (STEM) and are employed by an employer enrolled in the E-Verify employment eligibility verification system. 8 C.F.R. §214.2(f)(10)-(12). In 2016, the Obama Administration replaced the 17-month STEM extension with a 24-month extension, resulting in F-1 STEM degree holders being able to work for a total of 36 months

reported that there were 136,617 F-1 foreign students approved for OPT, up from 90,896 in FY2009.[64] In addition to the 12 to 36 months of OPT work authorization, F-1 students with pending H-1B petitions can extend their F-1 status and employment authorization until their H-1B employment begins.[65]

Nonimmigrant Visa Overstays

It is estimated that each year, hundreds of thousands of foreign nationals overstay their nonimmigrant visas and, as a consequence, become unauthorized aliens. The absence of a comprehensive system to track the exit of foreign nationals from the United States has made direct, complete measurement of overstays impossible. However, DHS has reportedly made progress in identifying and quantifying overstays and issued a report in each of 2016 and 2017 on this topic.[66] According to the 2017 report, which accounted for 50.4 million nonimmigrants who entered the United States through an air or sea port and were expected to depart in FY2016, an estimated 1.47% (or 739,478 individuals) were overstays.[67] This number includes individuals who left the country after their visa expired and those who were suspected to still be in the United States.

Given the historical lack of nonimmigrant departure data, immigration scholars have used estimation techniques to study the number and characteristics of the overstay population (and the population of unauthorized aliens writ large). Recent reports from the Center for Migration Studies found that, in each year from 2007 to 2014, the number of aliens becoming unauthorized by overstaying a nonimmigrant visa was higher than the number who did so by entering the country without inspection (EWI).[68] This is mainly a result of the sharp decline in the number of EWIs since the early 2000s.[69] Of the 11 million unauthorized aliens estimated to be living in the United States in 2014, 42% (4.5 million) were estimated to have arrived in the country legally and overstayed a visa.[70]

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in OPT status. Department of Homeland Security, "Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students," 81 *Federal Register* 13039-13122, March 11, 2016.

[64] See CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

[65] This is known as the Cap-Gap Extension because it bridges the six months between the earliest date an employer can file a petition for an H-1B worker (April 1) and the earliest date that a worker may start approved H-1B employment (October 1).

[66] Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, May 2017, https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf; Department of Homeland Security, *Entry/Exit Overstay Report: Fiscal Year 2015*, January 2017, https://www.dhs.gov/sites/default/files/publications/FY%2015%20DHS%20Entry%20and%20Exit%20Overstay%20Report.pdf.

[67] The reports note that DHS anticipates being able to broaden the scope of its data collection in future reports.

[68] Robert Warren and Donald Kerwin, "Beyond DAPA and DACA: Revisiting Legislative Reform in Light of Long-Term Trends in Unauthorized Immigration to the United States," *Journal on Migration and Human Security* , vol. 3, no. 1 (2015), pp. 80-108; Robert Warren and Donald Kerwin, "The 2,000 Mile Wall in Search of a Purpose: Since 2007 Visa Overstays have Outnumbered Undocumented Border Crossers by a Half Million," *Journal on Migration and Human Security*, vol. 5, no. 1 (2017), pp. 124-136.

[69] Ibid.

[70] Robert Warren and Donald Kerwin, "The 2,000 Mile Wall in Search of a Purpose: Since 2007 Visa Overstays have Outnumbered Undocumented Border Crossers by a Half Million," *Journal on Migration and Human Security*, vol. 5, no. 1 (2017), pp. 124-136.

Appendix. Delineating Current Law for Nonimmigrant Visas

Table A-1. Descriptions, Requirements, Limits, and FY2016 Issuances for Nonimmigrant Visas

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
A-1	Ambassador, public minister, career diplomat, consul, and immediate family	Duration of assignment			Within scope of official duties			10,754
A-2	Other foreign government official or employee and immediate family	Duration of assignment			Within scope of official duties			101,778
A-3	Attendant or personal employee of A-1/A-2, and immediate family	Up to three years	Up to two-year intervals		If formal bilateral employment agreements or informal de facto reciprocal arrangements exist and DOS provides a favorable recommendation			1,049
B-1	Visitor for business	Up to one year	Six-month increments	Yes	No			40,105
B-2	Visitor for pleasure	Six months to one year	Six-month increments	Yes	No			43,564
B-1/B-2	Visitor for business and pleasure	Six months to one year	Six-month increments	Yes	No			6,881,797
B-1/B-2/ BCC	Border crossing cards for Mexicans	Up to 30 days (or more if coupled with B-1 or B-2)		Yes	No			1,060,390

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
B-1/B-2/ BCV	Mexican Lincoln Border Crossing Visa	Up to 30 days (or more if coupled with B-1 or B-2)		Yes	No			46,333
C-1	Alien in transit	Up to 29 days	No					11,992
C-1/D	Transit/crew member	Up to 29 days	No					295,140
C-2	Person in transit to United Nations Headquarters	Up to 29 days	No					15
C-3	Foreign government official, immediate family, attendant, or personal employee in transit	Up to 29 days	No					9,073
CW-1	CNMI transitional worker	Up to one year	Up to one year			Yes	12,998 for FY2017	8,093
CW-2	Spouse or child of CW-1	Same as principal	Same as principal					879
D	Crew member	Up to 29 days	No		Only as employee of carrier; exception for longshore work in certain cases	Only for longshore work exception		6,322

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
E-1	Treaty trader, spouse and child, and employee	Up to two years	Extensions may be granted in increments of not more than two years for principal, spouse, and child. With limited exceptions, employees are not eligible for extensions of stay.		Treaty trader and employee: within the scope of treaty conditions; spouse: no restrictions			8,085
E-2	Treaty investor, spouse and child, and employee	Up to two years	Extensions may be granted in increments of not more than two years for principal, spouse, and child. With limited exceptions, employees are not eligible for extensions of stay.		Treaty trader and employee: within the scope of treaty conditions; spouse: no restrictions			44,243

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
E-2C	CNMI treaty investor, spouse, and child,	Up to two years	Extensions may be granted in increments of not more than two years, until the end of the transition period (12/31/2019)		Treaty investor: within the scope of treaty conditions and only in CNMI; spouse: only in CNMI			67
E-3	Australian specialty occupation professional	Up to two years	Renewable indefinitely based on validity of LCA		Within the scope of treaty conditions	Yes	10,500	5,609
E-3D	Spouse or child of E-3	Same as principal	Same as principal		Spouse only			4,299
E-3R	Returning E-3	Up to two years	Renewable indefinitely based on validity of LCA		Within the scope of treaty conditions			2,026
F-1	Foreign student (academic or language training program)	Period of study (limited to 12 months for secondary students)	Extensions granted for extenuating circumstances	Yes	Off campus work is restricted, with limited exceptions			471,728
F-2	Spouse or child of F-1	Same as principal			No			30,486
F-3	Border commuter academic or language student	Period of study		Yes	Only practical training related to degree			0

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
G-1	Principal resident representative of recognized foreign member government to international organization, staff, and immediate family	Duration of assignment			For principal: within scope of official duties; for dependents: pursuant to bilateral agreements or reciprocal arrangements			5,168
G-2	Other representative of recognized foreign member government to international organization, staff, and immediate family	Duration of assignment			Within scope of official duties; not authorized for dependents			15,906
G-3	Representative of non-recognized or nonmember foreign member government to international organization, staff, and immediate family	Duration of assignment			For principal: within scope of official duties; for dependents: pursuant to bilateral agreements or reciprocal arrangements			386
G-4	International organization officer or employee, and immediate family	Duration of assignment			For principal: within scope of official duties; for dependents: pursuant to bilateral agreements or reciprocal arrangements			22,756
G-5	Attendant or personal employee of G-1 through G-4, and immediate family	Up to three years	Up to two-year increments		For principal: within scope of official duties; not authorized for dependents			598

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
H-1B	Temporary worker—professional specialty occupation	Specialty occupation: up to three years (but may not exceed the validity period of the LCA); DOD research & development: up to five years; Fashion model: up to three years	Specialty occupation or fashion model: up to three years (six-year max total period of stay); DOD research & development: up to five years (10-year max total period of stay)		Yes	Yes	Specialty occupation or fashion model: 65,000, plus 20,000 for workers with U.S. advanced degrees; returning workers and certain research/educational employers are not counted against the cap DOD research & development: 100 at any time	180,057
H-1 B-1	Free trade agreement professional from Chile or Singapore	One year	In one-year increments		Yes	No	1,400 for Chile; 5,400 for Singapore	1,294
H-2A	Temporary worker—agricultural workers	Up to one year	In one-year increments; three years max	Yes	Yes	Yes		134,368
H-2B	Temporary worker—non-agricultural workers	Up to one year (up to three years in the case of a one-time event)	Up to one year; three years max	Yes	Yes	Yes	66,000 (an additional 15,000 visas were approved for the second half of FY2017)	84,627

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
H-3	Temporary worker—trainee	Alien trainee: up to two years Special education exchange visitor program: up to 18 months	Alien trainee: stay may be extended for length of training program, but no more than two years; Special education exchange visitor program: stay may be extended up to 18 months	Yes	Yes, as part of the training program		Special education exchange visitor program: 50	1,435
H-4	Spouse or child of H-1B, H-1B-1, H-2A, H-2B, or H-3	Same as principal	Same as principal	Yes	Only if H-1B spouse has an approved petition for employment-based LPR status			134,368
I	Representative of foreign information media, spouse and child	Duration of employment			Only as employee of foreign media			14,536
J-1	Cultural exchange visitor	Period of program		Yes	Yes, if program has work component			339,712
J-2	Spouse or child of J-1	Same as principal			Only as approved by DHS			40,408
K-1	Fiancé(e) of U.S. citizen	Valid for four months; must marry within 90 days of entry to adjust status			Yes			38,403

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
K-2	Child of K-1	Same as principal			Yes			5,727
K-3	Spouse of U.S. citizen awaiting LPR visa	Two years	Two-year increments		Yes			102
K-4	Child of K-3	Two years or until 21st birthday	Two-year increments		Yes			20
L-1	Intracompany transferee (executive, managerial, and specialized knowledge personnel continuing employment with international firm or corporation)	Up to three years except only up to one year when beneficiary is coming to open or be employed in a new office	Increments of up to two years (total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity; or seven years for aliens employed in a managerial or executive capacity)		Yes			79,306
L-2	Spouse or child of L-1	Same as principal	Same as principal		Only as approved by USCIS			85,872
M-1	Vocational student	Duration of study	Up to three years from original start date	Yes	Only practical training related to degree			10,305
M-2	Spouse or child of M-1	Same as principal	Same as principal	Yes	No			389
M-3	Border commuter vocational or nonacademic student	Period of study		Yes	Only practical training related to degree			0

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
NATO-1	Principal permanent representative of member nations to NATO, high ranking NATO officials, and immediate family members	Tour of duty			Within scope of official duties			10
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			Within scope of official duties			5,588
NATO-3	Official clerical staff accompanying a representative of a member state to NATO, and immediate family	Tour of duty			Within scope of official duties			2
NATO-4	Officials of NATO (other than those classifiable as NATO-1), and immediate family	Tour of duty			Within scope of official duties			168
NATO-5	Experts, other than NATO-4 officials, employed in missions on behalf of NATO, and their dependents	Tour of duty			Within scope of official duties			42

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
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			Within scope of official duties			525
NATO-7	Attendant or personal employee of NATO-1 through NATO-6, and immediate family	Up to three years	Increments of up to two years		Within scope of official duties			1
N-8	Parent of certain special immigrants (pertaining to international organizations)	Up to three years, as long as special immigrant remains a child	Up to three-year intervals, as long as special immigrant remains a child		Yes			0
N-9	Child of N-8 or of certain special immigrants (pertaining to international organizations)	Up to three years, until no longer a child	Up to three-year intervals, until no longer a child		Yes			0
O-1	Person with extraordinary ability in the sciences, arts, education, business, or athletics	Up to three years	Up to one year		Yes			15,918
O-2	Person accompanying and assisting in the artistic or athletic performance by O-1	Up to three years	Up to one year	Yes	Yes			7,417
O-3	Spouse or child of O-1 or O-2	Same as principal	Same as principal		Only as approved by USCIS			4,836

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
P-1	Internationally recognized athlete or member of an internationally recognized entertainment group and essential support	Up to five years for individual; up to one year for group or team	Up to five years for individual; up to one year for group or team	Yes	Yes			24,858
P-2	Artist or entertainer in a reciprocal exchange program and essential support	Up to one year	Up to one year	Yes	Yes			72
P-3	Artist or entertainer in a culturally unique program and essential support	Up to one year	Up to one year	Yes	Yes			9,580
P-4	Spouse or child of P-1, P-2, or P-3	Same as principal	One-year increments	Yes	Only as approved by USCIS			1,185
Q-1	International cultural exchange program participant	Duration of program; up to 15 months	One-year increments	Yes	Yes, with employer approved by program			2,025
R-1	Religious worker	Up to 30 months	Up to 30 months, not to exceed 5 years total stay		Yes			4,764
R-2	Spouse or child of R-1	Same as principal	Same as principal		No			1,660
S-5	Criminal informant	Up to three years	No extension; may adjust to LPR status if contribution was substantial		Yes		200	0

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
S-6	Terrorist informant	Up to three years	No extension; may adjust to LPR status if contribution was substantial		Yes		50	0
S-7	Spouse or child of S-5 and S-6	Same as principal	Same as principal					1
T-1	Victim of human trafficking	Up to four years; may adjust to LPR status if conditions are met	Only for law enforcement need, adjustment to LPR status, or exceptional circumstances		Yes		5,000	0
T-2	Spouse of T-1	Same as principal	Same as principal		Yes			89
T-3	Child of T-1	Same as principal	Same as principal					310
T-4	Parent of T-1	Same as principal	Same as principal					26
T-5	Unmarried sibling under 18 years of age on date T-1 applied	Same as principal	Same as principal					40
T-6	Adult or minor child of T-1	Same as principal	Same as principal					7
TN	NAFTA professional	Up to three years	Renewable indefinitely, in up to three-year intervals		Yes			14,768
TD	Spouse or child of TN	Three years	Same as principal					9,762

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2016 Issuances
U-1	Victim or informant of criminal activity	Up to four years; may lead to adjustment to LPR status if specified conditions are met.	Only if necessary for law enforcement purposes		Yes		10,000	146
U-2	Spouse of U-1	Same as principal	Same as principal		Yes			113
U-3	Child of U-1	Same as principal	Same as principal					1204
U-4	Parent of U-1 under the age of 21	Same as principal	Same as principal					40
U-5	Unmarried sibling under age 18	Same as principal	Same as principal					60
V-1	Spouse of LPR who has petition pending for three years or longer; transitional visa that leads to LPR status when visa becomes available	Up to two years	Up to two years		Yes			0
V-2	Child of LPR who has petition pending for three years or longer	Up to two years, or until 21st birthday	Up to two years, or until 21st birthday		Yes, assuming they meet age requirements			0
V-3	Child of V-1 or V-2	Up to two years, or until 21st birthday	Up to two years, or until 21st birthday		Yes, assuming they meet age requirements			0
Grand Total								10,381,491

Source: §101(a)(15), §212, and §214 of the Immigration and Nationality Act; and §214 of 8 C.F.R., and Department of State, *Report of the Visa Office 2016*.

Notes: When a cell in the table is blank, it means the law and regulations are silent on the subject. CNMI = Commonwealth of the Northern Mariana Islands; LCA = labor condition application; NATO = North Atlantic Treaty Organization; and NAFTA = North American Free Trade Agreement.

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