

The statutory authority is section 101(a)(15) and 214(c)(1); 8 U.S.C. 1101(a)(15) and 1184(c)(1) of the Immigration and Nationality Act (INA).

101(a)(15)(H)

§1101. Definitions

(a) As used in this chapter-

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens-

(H) an alien (i) [(a) Repealed. [Pub. L. 106–95, §2\(c\), Nov. 12, 1999, 113 Stat. 1316](#)] (b) subject to [section 1182\(j\)\(2\) of this title](#), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in [section 1184\(i\)\(1\) of this title](#) or as a fashion model, who meets the requirements for the occupation specified in [section 1184\(i\)\(2\) of this title](#) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under [section 1182\(n\)\(1\) of this title](#), or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in [section 1184\(g\)\(8\)\(A\) of this title](#), who is engaged in a specialty occupation described in [section 1184\(i\)\(3\) of this title](#), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under [section 1182\(t\)\(1\) of this title](#), or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in [section 1182\(m\)\(1\) of this title](#), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under [section 1182\(m\)\(2\) of this title](#) for the facility (as defined in [section 1182\(m\)\(6\) of this title](#)) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in [section 3121\(g\) of title 26](#), agriculture as defined in [section 203\(f\) of title 29](#), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

214(c)(1)

§1184. Admission of nonimmigrants

(c) Petition of importing employer

(1) The question of importing any alien as a nonimmigrant under subparagraph (H), (L), (O), or (P)(i) of [section 1101\(a\)\(15\) of this title](#) (excluding nonimmigrants under [section 1101\(a\)\(15\)\(H\)\(i\)\(b1\) of this title](#)) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition, shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in [section 1101\(a\)\(15\)\(H\)\(ii\)\(a\) of this title](#), the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of [section 1188 of this title](#) shall apply to the question of importing any alien as a nonimmigrant under [section 1101\(a\)\(15\)\(H\)\(ii\)\(a\) of this title](#).

The regulatory authority is 8 CFR 214.2 (h)(2)(i)(A), as amended by 1615 AC-18

(h) * * *

(2) Petitions. (i) Filing of petitions. (A) General. A United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3 temporary employee must file a petition on the form prescribed by USCIS in accordance with the form instructions.

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