

Isn't a B-1 Enough?

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Often times, after recommending a U.S. nonimmigrant (temporary) employment authorization category to a foreign national, we hear the question “But can’t I just enter as a Business Visitor?”

The answer often comes down to the fact that the proposed U.S. activities may or may not be permissible as a [Business Visitor \(B-1\)](#). The Business Visitor category is a nebulous gray area; while a few activities clearly fall under the B-1 scope, and some clearly do not, most activities have blurry lines from an immigration perspective. In addition, it’s an inherently inconsistent admission category—just because a foreign national is admitted in B-1 status today does not mean that they will be admitted to the U.S. in B-1 status next week, even for the same exact activities.

So the questions we ask in return to this question? What is the value you risk sacrificing if you fail to enter the U.S. for your intended activities? Damage to your credibility, failure to meet contractual obligations, lost revenues/clients? Do you want to be forced into a position of calling your client/customer to explain that you can’t enter the U.S. that day? Are you willing to cope with the stress of potentially being denied admission? If you have employees entering the U.S., do you want to risk their negative experiences and potentially lose those valued employees? If the answer to any of these questions is “no,” you should consider contacting a U.S. immigration lawyer ahead of time to help assess your risk and plan to prevent issues.

Ultimately, it comes down to the level of risk that you find acceptable. Individuals and groups crossing borders into the U.S. are generally seeking reliability and consistency in their ability to travel to the U.S. for their intended purposes. Some of these may, arguably, be classifiable as Business Visitor activities, even where they are not crossing for the most obvious or common business visitor purposes. And so the question becomes: do you want to leave it to the discretion of the particular [U.S. Customs and Border Protection](#) (CBP) officer you may encounter that day? Are you willing to take what is arguably an avoidable and unnecessary risk for your business?

Some of these individuals may be better positioned by preparing a B-1 entry letter ahead of time, explaining how their proposed U.S. activities meet the requirements of a Business Visitor and/or bringing evidence that supports your claim that you meet the requirements to be admitted to the U.S. as a B-1 business visitor. However, in the long-term, depending on the frequency and length of entries and type of activities, a non-immigrant (temporary) employment status is likely the ideal solution.

At the end of the day, when comparing the potential losses associated with a denied entry, the time and other costs of preparing a proper application to seek temporary/nonimmigrant status in the U.S. are minimal and can generate long-term benefits for you or your business. At all times however, it is important that the foreign national

be honest with CBP about their intended activities in the U.S. and that their employers know what activities the foreign nationals are conducting in the U.S. on their behalf. If the foreign national is performing activities in the U.S. beyond which was outlined and disclosed to CBP upon entry, the company and foreign national could subject themselves to liabilities and penalties.

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