

# E-3 Visa - Australian Specialty Occupation Workers

## GENERAL

Pursuant to the 2005 United States-Australia Free Trade Agreement, the E-3 visa classification allows Australian citizens to enter and work in the United States in a specialty occupation for two (2) years.

The E-3 classification also allows the principal applicant's spouse and children (unmarried and under 21 years old) to enter the United States. It further permits the spouse of the principal applicant to apply for work authorization in the United States.

## QUALIFYING EMPLOYEES

To qualify for an E-3 visa, the applicant must:

1. Be a national of Australia;
2. Have a legitimate offer of employment in the United States in a specialty occupation; and
3. Have the required academic background or other qualifying credentials for the specialty occupation.

Specialty Occupation:

The Immigration and Nationality Act (INA) defines the term "specialty occupation" as a job that requires:

1. "theoretical and practical application of a body of highly specialized knowledge to perform the occupation"; and
2. "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."

( See INA s 214(i)(1)).

Generally, a specialty occupation is one that cannot be performed without a bachelor's degree or higher (or its equivalent) in a specific field of study or a narrow range of fields of study. In some instances, it may be possible to substitute experience for the bachelor's degree requirement.

Examples of specialty occupations include but are limited to: architects; engineers; professors; teachers; lawyers/attorneys; database administrators and other information technology-related occupations; accountants; financial analysts; budget analysts; economists; public relations and communication specialists; doctors; dentists; physical therapists; dietitians; other medical and health related occupations; writers; editors; librarians; archivists; marketing and advertising positions; and social workers, to name a few.

The requirements for an E-3 visa with respect to the education of the beneficiary and the job duties to be performed mirror the requirements for an H-1B visa and are found in 8 CFR sec.214.2(h). General documentary requirements for H-1Bs, and therefore E-3s, can be found in 8 CFR sec.214.2(h)(4)(iv).

## FILING PROCEDURE

An E-3 visa application can be filed at a U.S. Embassy or Consulate abroad, or from within the United States, if the foreign national is in the United States in a valid nonimmigrant visa status.

If the foreign national is abroad, the application is made directly at the Embassy or Consulate where the foreign national resides, similar to other nonimmigrant classifications, such as the B-1/B-2 or F-1 classification (without a petition having to be filed with USCIS). If possible, the foreign national should apply for their E-3 visa at a U.S. Embassy or Consulate in Australia, however in some instances, it may be possible for the foreign national to apply for an E-3 visa at a third country Embassy or Consulate, such as in Canada, Mexico, or Barbados, so long as that Embassy or Consulate will adjudicate a visa application from a third country national.

If the foreign national is legally present in the United States, a petition may be filed with the Vermont Service Center of USCIS, which is the only Service Center with jurisdiction over E-3 petitions as of January 2021.

To apply for an E-3 visa at a U.S. Embassy or Consulate, the application package will need to include:

1. Form DS-160, Nonimmigrant Visa Application;
2. Certified Labor Condition Application that reflects the job offer at the appropriate prevailing wage rate;
3. Job offer, in the form of a support letter, establishing that the foreign national will be engaged in a specialty occupation and paid the higher of the actual or prevailing wage; and
4. Academic or other credentials demonstrating qualifications for the offered position.

When filing an E-3 application with USCIS in the United States, the application package should include:

- Form I-129, Petition for Nonimmigrant Worker;
- Certified Labor Condition Application that reflects the job offer at the appropriate prevailing wage rate;
- Job offer, in the form of a support letter, establishing that the foreign national will be engaged in a specialty occupation and paid the higher of the actual or prevailing wage; and
- Academic or other credentials demonstrating qualifications for the offered position.

We highly recommend contacting an attorney to assist you with this process. An attorney can provide guidance on the prevailing wage rate, ensure that a correct Labor Condition Application is filed and certified, and advise on whether the job offer is likely to be considered a specialty occupation.

## ANNUAL QUOTA

Congress has specified a maximum number of 10,500 new E-3 visas per fiscal year. Since the passage of the E-3 legislation in 2005, the quota has yet to be reached.

## **TERM OF ADMISSION**

The term of admission for E-3 visas is the same as E-1s and E-2s, in that the initial period of admission is two (2) years. E-3 visa holders may qualify to receive two (2) year extensions indefinitely, so long as they otherwise continue to qualify for the E-3 classification. There is no limit on extensions.

## **CHANGE OF EMPLOYER**

If an E-3 visa holder would like to change employers while remaining in the United States, the new employer must obtain a certified Labor Condition Application for the position that the foreign national will be employed and must properly file a Form I-129 petition. The Form I-129 petition must be approved before the foreign national is authorized to work for the new employer.

## **DEPENDENTS IN E-3 STATUS**

Spouses of E-3 principals are not required to be Australian citizens, and, pursuant to INA s 214(e)(6), are eligible to apply for work authorization in the United States. Such spousal employment may be in a position other than a specialty occupation. This is an advantage over the H-1B; i.e., a dependent H-4 spouse is generally not eligible to obtain permission to work in the United States unless the principal H-1B spouse is in the later stage of the green card process.

Contact our office to speak with a member of our Immigration Law Group.