Comparing TN Treaty NAFTA, J-1 Exchange Visitor, H-1B Specialty Occupation Nonimmigrant Worker Statuses
(2009)

TN Treaty NAFTA, available only for Canadian and Mexican (or Singaporean or Chilean) citizens working in one of the professions specified in the NAFTA Treaty. Appropriate for:

- Basic scientists of all academic ranks.
- Post-doctoral fellows engaged in a specific and time-limited research project
- Physicians doing research who are not involved in any direct patient care and do not have any form of contact with patients.

TN Advantages – No employer filing fees, relatively fast turnaround, ISSS and Department have more control of the process; scholar presents offer letter, TN-specific cover letter, and academic credentials for entry or visa. No time limit. Each TN entry can be valid for up to three years.

TN Disadvantages – Scholar must pay $50 TN fee at the border (Canadians) or before applying for visa (Mexicans, Chileans, Singaporeans). For temporary visits only; requires that person have a residence in their country and no intent to immigrate to the US.

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J-1 Exchange Visitor Research Scholar/Professor status is appropriate for:

- Basic scientists of all academic ranks, including people who are students in their home countries, with a minimum of a bachelor’s degree.
- Post-doctoral fellows engaged in a specific and time-limited research project
- Physicians doing research who are not involved in any direct patient care and do not have any form of contact with patients (no touching patients in J-1 status on the University’s program).

J-1 status CANNOT be used for anyone who will hold a tenure-eligible position or have patient contact.

J-1 Advantages – No employer filing fees, relatively fast turnaround, ISSS has more control of the process, J-2 spouses can obtain work permission.

J-1 Disadvantages – Scholar must pay I-901 fee ($180) before applying for visa. For temporary visits only; requires that person have a residence in their country and no intent to immigrate to the US; two-year home residency requirement for those on their home country’s skills list, with government funding, or sponsored by ECFMG; J-1 category may be relatively difficult to change; J visa holders on University’s J program forbidden to touch patients. Total time limited to 5 years.

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H-1B Specialty Occupation status is appropriate for professional positions that require a minimum of a bachelor’s degree or higher in a specific field. At UC Denver, these employee positions include, but are not limited to:

- Postdoctoral Fellows
- Assistant, Associate, or Full Professors, research or regular series
- Visiting Assistant, Associate, and Professors
- Lecturers/Instructors
- Professional Research Assistants; Research Associates
- Other Professional Exempt or State Classified Staff where a specific degree is minimum requirement

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H-1B status CANNOT be used for pre-doctoral trainees (PeopleSoft Code 3204) or for Student Stipends (PeopleSoft Code 3205). H-1B workers must be "employed" by the University in a legal sense, and these employees receive "non-service scholarships" and are not treated as employees for any purpose.

H-1B Advantages – No requirement of a residence abroad; can be obtained quickly using premium processing; employee can start with new employer as soon as petition filed if already in H status; 6 year max rather than 5 for J-1; visas easier to obtain because nonimmigrant intent not an issue.

H-1B Disadvantages – Employer must pay prevailing wage or higher; employer must pay filing fees, which can add up quickly*; H-4 spouses cannot work; if employee is terminated before expiration date on I-797 Approval Notice, employer must pay transportation costs to employee’s home country.

*Filing fees:
I-129 Filing Fee $320.00
Anti-Fraud Fee $500.00 (for initial petition only, not for extensions or amendments)
I-539 Filing Fee $300.00 (for dependents in the US)
Premium Processing Fee $1,000.00