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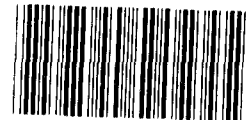
GAO

Briefing Report to the Chairman,
Subcommittee on Oversight and
Investigation, Committee on Energy and
Commerce, House of Representatives

December 1987

VISAS

U.S. And Japanese
Practices for Granting
Business Visas



135021

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GAO/NSIAD-88-48BR

540906



National Security and
International Affairs Division

B-229212

December 29, 1987

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

In response to your letter of September 8, 1986, and subsequent discussions with your office, this report provides information on the U.S. review process for issuing the E- and L-visas,¹ Japan's visa system, and a profile on Japanese obtaining E- and L-visas from the United States.

We obtained the following information on the U.S. E- and L-visa review process:

- In fiscal year 1986, the U.S. embassy in Tokyo and the U.S. consulate in Osaka issued about 9,700 E-visas and 4,000 L-visas to Japanese citizens.
- U.S. consular officers are given wide latitude in deciding whether a visa should be issued.
- The Department of State specifies what factors are to be used in considering visa applications--i.e., the applicant's position in the company, salary, experience--but does not provide guidance on the relative weight or

¹An E-visa, known as a treaty trader/investor visa, provides nonimmigrant status for a national of any country with which an appropriate treaty of commerce and navigation exists, who is coming to the United States to carry on substantial trade, principally between the United States and his/her own country, or to develop and direct the operations of an enterprise in which he/she has invested, or is actively in the process of investing, a substantial amount of capital. An L-visa is authorized for an intracompany transferee (executive, manager, or specialized knowledge personnel) to continue employment with the international firm or corporation in a similar position in its U.S. operation.

emphasis that should be assigned to those various factors.

- State is reluctant to provide more specific guidance because it believes that the flexibility of such visas to cover the myriad of situations in the complex, modern-day business world would be reduced.
- Very few Japanese business visa applications are refused by the consular offices in Tokyo and Osaka.

The Treaty of Friendship, Commerce, and Navigation between the United States and Japan permits citizens of each country to enter the other's country to carry on trade in related commercial activities, develop and direct the operations of a firm in which they have invested or are in the process of investing, and for other business purposes. In addition, the treaty calls for equal treatment or the same privileges that native companies have in engaging in commercial, industrial, financial, and other business activities within their country.

Consular officers rely on the information provided by the applicant and the company to decide whether a visa should be issued. Verification of the information furnished is generally limited to interviewing the applicant or requesting additional documentation from the applicant or his company.

To obtain some insights into who is receiving E- and L-visas, we developed profile information on users of these business visas. We compiled data on the users of E-visas from 80 Japanese companies. The operations of these companies in the United States ranged from one to several thousand employees, and investment or trade volume ranged from \$10,000 to \$1.3 billion. In our sample of 224 employees who received E-visas in 1986, 191 were executives/supervisors and 33 were essential skill personnel. These employees had an average of 14.2 years of experience with their companies, an average salary of \$59,566, and about 71 percent were college graduates.

Of 41 L-visa holders we sampled, 26 were approved as executives or managers. These visa holders had an average of 11 years of experience with their companies, an average salary of \$49,997, and about 51 percent were college graduates.

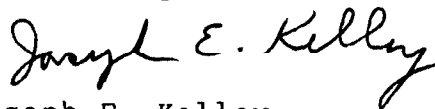
Information we obtained from Japanese officials on the Japanese visa system showed the following:

- During a recent 3-year period, the Japanese issued in the United States an annual average of 6,390 posting visas (for persons engaged in commercial business, religious activities, and news reporting) and working visas (for persons seeking employment, such as professors and entertainers).
- According to Japanese officials and representatives of five U.S. companies, the Japanese government can take between several days and several months to issue visas to U.S. citizens. The lengthy reviews occur when Japanese consulates send posting visa applications for personnel of small businesses and all working visas back to Japan for review. The review process can take 2 or more months, according to Japanese officials.
- Japan requires that a company meet a minimum (but not publicly stated) gross sales and/or investment amount for its employees to qualify for visas.

Appendixes I through III provide more detailed information on the U.S. visa operation in Japan, the Japanese visa system, and a profile of Japanese users of E- and L-visas. The objective, scope, and methodology of our review are described in appendix IV. As requested, we did not obtain official agency comments on this report.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this report. At that time we will send copies to appropriate congressional committees; the Director, Office of Management and Budget; and other interested parties.

Sincerely yours,



Joseph E. Kelley
Associate Director

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ABBREVIATIONS

INS Immigration and Naturalization Service

U. S. VISA OPERATION IN JAPAN

The Immigration and Nationality Act of 1952, as amended, requires aliens entering the United States to have a valid passport and a U.S. visa. Section 104 of the act requires the Secretary of State to establish regulations for admitting aliens to the United States and gives responsibility for issuing visas to consular officers. Section 103 of the act defines the role of the Attorney General and the Commissioner of the Immigration and Naturalization Service (INS) in administering and enforcing the laws relating to the immigration and naturalization of aliens.

Aliens entering for business purposes must have one of the nonimmigrant visas provided by section 101 (15) of the act as shown in table I.1.

Table I.1: U.S. Nonimmigrant Business Visa Categories

<u>Category</u>	<u>Visa type</u>
Temporary visitor:	
Business	B-1
Business and/or pleasure	B-1/B-2
Treaty trader/investor:	
Trader	E-1
Investor	E-2
Temporary worker and trainee:	
Distinguished merit and ability	H-1
Perform services not available in the United States	H-2
Trainee	H-3
Dependents of temporary worker/trainee	H-4
Intracompany transferee:	
Executive, managerial, or specialized knowledge	L-1
Dependents of intracompany transferee	L-2

During fiscal year 1986, the U.S. embassy in Tokyo and consulate in Osaka issued 1,089,033 nonimmigrant visas to Japanese of which 1,042,991 (or about 95 percent) were nonimmigrant visas established by the act to provide for business activities. Most of these were dual purpose visas used for business and/or pleasure. Table I.2 shows a breakdown of the business visas issued by the two offices.

Table T.2: U.S. Business Visas Issued to Japanese for Fiscal Year 1986

<u>Visa type</u>	<u>Tokyo</u>	<u>Osaka</u>	<u>Total</u>
B-1	166	37	203
B-1/B-2 ^a	620,624	405,459	1,026,083
E-1 ^b	4,901	1,354	6,255
E-2 ^b	2,359	1,088	3,447
H-1	1,385	157	1,542
H-2	775	52	827
H-3	193	52	245
H-4 ^c	319	84	403
L-1	1,372	321	1,693
L-2 ^c	1,766	527	2,293
Total	<u>633,860</u>	<u>409,131</u>	<u>1,042,991</u>

^aDual purpose visa used for business and/or pleasure.

^bIncludes spouses and dependents, which are estimated by consular officials to be about one-half of the visas in these categories.

^cSpouses and dependents.

The two offices issued a total of 9,702 E-visas in fiscal year 1986. Of this amount, the office in Osaka issued 2,442 E-visas and refused 41 applicants (or about 2 percent). Comparable statistics on the refusal rate at Tokyo were not available for the same time period. However, between August 25 and September 30, 1986, the office in Tokyo issued 1,069 E-visas and refused 42 applicants (or about 4 percent).

CRITERIA FOR APPROVING E- AND L-VISAS

A consular officer has wide latitude in deciding whether a visa should be issued. The officer makes a decision based on the Immigration and Nationality Act, as amended, applicable regulations, factors contained in volume 9 of the Foreign Affairs Manual, previous cases adjudicated by consular offices including advisory opinions, and the U.S. labor market. Volume 9 does not indicate the relative weight or emphasis that should be assigned to the various factors used to determine if the applicant meets the executive, supervisory, or managerial requirement, that is, the number of employees to be supervised, previous experience, position in company, training, duties, salary, and degree of control and responsibility for the company's operation.

Consular officers' goal is either to issue or refuse an E-visa within 3 weeks of receiving an application. For all other visas, including the H- and the L-visas, the goal is to reach a decision within 48 hours after an application is received.

E-visa--substantial trade or investment

An E-visa applicant must be employed by a company of a country with which the United States has a treaty of commerce and navigation and must be coming to the United States as either a treaty trader or investor. According to State, the purpose of the E-visa is to attract and increase both world trade and foreign investments.

A treaty trader is required to carry on substantial trade, principally between the United States and the country of which the trader is a national. However, volume 9 does not provide a dollar amount on the volume of trade that a company has to achieve to meet the substantial trade requirement. Volume 9 does provide that at least 51 percent of the total volume of trade conducted by the treaty trader or the employing firm in the United States must be between the United States and the treaty trader's country. To verify the 51 percent, officers rely on company-furnished information.

Treaty investors are required to make substantial investments in the United States. The requirements are that at least 50 percent of the investment must originate from the entity's country and the investment must be more than marginal or more than for the purpose of earning a living. Volume 9 states that the term substantial relates to the type of business. Consular officers told us that identical investments in two different types of companies may qualify one company for E-visa status and not the other. To determine if the substantiality requirement is met, officers consider whether the amount of the investment is sufficient to ensure the economic viability of the business.

To obtain an E-visa, State Department regulations and volume 9 require that employees of a treaty trader or investor be employed in a supervisory or executive capacity or have skills that make their services essential to the firm. Some of the consular officers with whom we spoke believed that this requirement is not specific enough to refuse a visa. However, the U.S. Consul General in Tokyo believed that the criterion is adequate. When there is doubt about an applicant, the Consul General said an advisory opinion is requested from the State Department. State is reluctant to provide more specific criteria because it believes the flexibility of the E-visa to cover today's complex business world would be inhibited.

A specially qualified technician can be issued an E-visa if the employer can establish that a qualified American is not available. Volume 9 suggests that if the essential skill questions cannot be resolved, the consular officers should ask firms to provide statements on availability of U.S. workers from sources such as chambers of commerce, labor organizations, industry trade associations, or state employment agencies. Finally, the regulations state that it should be stressed to firms that they

should train U.S. workers to do such jobs after a brief transition period (usually not more than a year) and should not expect to replace these personnel with other employees with E-visas.

Consular officers stated that they rely on the information provided by the applicant and the company to make a decision on a visa application. Outside of requesting additional documents and/or interviewing the applicant, consular officers generally accept the information without verification because of the volume of applicants.

L-visas

The L-visa was introduced to accommodate international businesses having offices in many countries and having specialized employees whose careers involve assignments to the firms' overseas offices. This visa allows such a firm to assign an employee to the United States to continue to provide the same service, and be either an executive, or manager, or have specialized knowledge--without undergoing the delays which could arise if the applicant had to qualify as an immigrant.

The Immigration and Nationality Act of 1952, as amended, states that before an L-visa is issued, INS must establish the applicant's entitlement to L-classification. An applicant's employer files a petition with INS that provides information on the nature of the business, number of employees, and annual gross income. INS also requires information on the work to be performed by the employee, the period of time, and whether the position will be in a managerial/executive capacity or require specialized knowledge. INS uses this information to determine whether the cited business activities, corporate relationships, and employer intent are appropriate for an L-visa. INS officials informed us that INS does not have the resources to go beyond the documentation submitted with the visa petition.

According to INS, to obtain an L-classification, the services performed by the alien abroad and in the United States must be either executive or managerial, or involve specialized knowledge. In 1987, INS revised its definition to require managerial employees to spend virtually all of their time performing managerial or executive functions. INS also requires that the specialized knowledge (1) be limited to a few individuals, (2) be unique, and (3) involve a key process or function that enhances the firm's competitiveness and operations. The applicants also must have been employed by the company outside the United States for at least one year.

Once INS approves the company petition, the applicant requests a visa from the embassy. An L-visa will be issued provided there is sufficient evidence of the alien's intent to return to Japan.

Consular officers stated that they do not readjudicate an INS-approved L-visa company petition because they believe that the majority of the petitions are valid and any disagreement on the interpretation of the facts would not be sufficient reason to withhold a visa. In addition, volume 9 states that only a minimum number of cases should be returned to INS for reconsideration to avoid inconveniencing bona fide petitioners and their beneficiaries. According to U.S. consular officials in Tokyo and Osaka, less than 10 petitions were returned to INS for readjudication in fiscal year 1986 because the applicants had not met the visa criteria.

THE JAPANESE VISA SYSTEM

All foreign nationals entering Japan are required to have a valid passport and visa. Table II.1 shows the Japanese visa categories.

Table II.1: Japan's Nonimmigrant Visa Categories

<u>visa category</u>	<u>Qualifying persons</u>
Diplomatic	Diplomats and consular officials on official duty and their families
Official	Other officials on official duty and their families
Transit	Travelers in transit
Short term stay	Visitors whose purposes are tourism, visiting relatives, attending meetings, amateur sports, inspection tours, business, cultural activities, religious mission, news reporting, and other nonremunerative activities
Posting	Persons engaging in commercial business (trade, management of business), religious activities, and news reporting
Working	Persons seeking employment such as professors, entertainers, technicians of special or advanced industrial technology or expertise, skilled laborers, foreign language teachers, and persons in other employment areas
Specified	Students at junior colleges and universities, industrial trainees, persons engaging in cultural activities, persons joining their families, students at schools other than junior colleges and universities, and persons not mentioned above

Japanese Bureau of Immigration officials stated that statistics on the number of working and posting visas are not kept by nationality but by the place of issuance. During the 3-year period ending in 1985, the Japanese issued annually an average of 6,390 posting and working visas in the United States as shown in table II.2.

Table II.2: Posting and Working Visas Issued by the Japanese Government in the United States

<u>Year</u>	<u>Posting</u>	<u>Working</u>	<u>Total</u> ^a
1983	854	5,167	6,021
1984	1,017	5,633	6,650
1985 ^b	<u>897</u>	<u>5,601</u>	<u>6,498</u>
Total	<u>2,768</u>	<u>16,401</u>	<u>19,169</u>
3-year average	923	5,467	6,390

^aIncludes all working and posting visas issued in the United States regardless of nationality. Statistics on visas issued to U.S. citizens are not compiled separately.

^bThe most recent annual data available.

VISA VALIDITY AND PERIOD OF ADMISSION

The Japanese Bureau of Immigration admits foreigners by stamping in their passports a status of residence, which permits them to conduct certain activities while in Japan.¹ A period of stay based on the status of residence granted is also stamped in the passport. Table II.3 shows the Japanese status of residence and durations of stay.

¹The status of residence is designated by a number that refers to the article, paragraph, and item of the Japanese Immigration-Control and Refugee-Recognition Act. For clarification, we have labeled the status of residences that pertain to businesses as follows: manager, technician, skilled labor, and other.

Table II.3: Status of Residence and Duration of Stay Granted
Business Activities

<u>Status</u>	<u>Qualifying person</u>	<u>Period of stay</u>
Manager	Persons engaged in the management of a business, foreign trade, or capital investment activities.	3 years, 1 year, 6 or 3 months
Technician	Persons invited by a public or private organization to furnish high-level or specialized skills.	3 years, 1 year, 6 or 3 months
Skilled Labor	Persons engaged in skilled labor, such as cooks for Chinese or French cuisine or western-style confectioners.	1 year, 6 or 3 months
Other	Persons who do not fall under any other status but are permitted to reside at the discretion of the Ministry of Justice.	Up to 3 years, the precise period is determined on a case-by-case basis.

During the 3-year period ending in 1985, Japan admitted an average of 419,024 people from the United States annually. The number of people from the United States admitted for business activities is shown in table II.4.

Table II.4: People From the United States Entering Japan for
Business Activities

<u>Year</u>	<u>Manager</u>	<u>Technician</u>	<u>Skilled labor</u>	<u>Other</u>	<u>Total</u>
1983	4,832	1	0	3,843	8,676
1984	4,675	2	1	1,224	5,902
1985	<u>4,519</u>	<u>4</u>	<u>4</u>	<u>596</u>	<u>5,123</u>
Total	<u>14,026</u>	<u>7</u>	<u>5</u>	<u>5,663</u>	<u>19,701</u>

Japanese consulates in the United States send posting visa applications for personnel of small businesses and all working visas to Japan for review by the Ministry of Foreign Affairs. The Ministry seeks input from the Ministry of Justice and then decides whether to approve or refuse the application. The adjudicated application is then returned to the Japanese consular officer in the United States, who either issues or denies the visa. Even with

proper documentation, Japanese officials estimated that 2 or more months may be required to approve the visa.

A Japanese Bureau of Immigration official stated that a company must also meet a minimum gross sales and/or investment requirement for its employees to qualify for a visa. The official stated that the minimum requirement was not for public disclosure.

American experiences in
obtaining Japanese visas

We met with officials of the American Chamber of Commerce and five large U.S. companies in Japan to obtain their views on getting visas for their U.S. employees working in Japan. The executive director of the American Chamber of Commerce in Japan and officials at four of the five companies we contacted stated that they generally have not encountered difficulty obtaining visas for their employees. The officials of these companies said that the Japanese consulates in the United States generally issued the visas within several days of a completed application. Officials of one company in the hotel industry stated that they had experienced delays of up to several months before obtaining visas for their employees. We were told that the positions experiencing delays included a training manager, an executive secretary, an assistant manager, an English instructor, and a financial coordinator.

PROFILES ON JAPANESE USERS OF E- AND L-VISAS

Profiles on the users of E-visa and L-visa holders showed that most employees were either executives or supervisors, college graduates, males, and had been with their companies for a number of years. On the average, they also had high salaries.

E-VISA HOLDERS

From a sample of 80 firms, we developed profiles on 224 users of the E-visa. Of the 224 employees, 191 were executives or supervisors and 33 were essential skill personnel.

The size of the companies' U.S. operations ranged from one employee to several thousand employees with investment or trade ranging from \$10,000 to \$1.3 billion per year. Table III.1 summarizes the 80 companies sampled.

Table III.1: Profile of Companies With E-Status

<u>Category</u>	<u>Number of companies</u>	<u>Trade or investment</u>	<u>Employees</u>	
			<u>American</u>	<u>Japanese</u>
E-1 Traders	39	\$3,421,965,000	4,985	717
Average		87,742,692	127.8	18.4
E-2 Investors	41	\$ 435,830,000	3,652	243
Average	—	<u>10,630,000</u>	<u>89.1</u>	<u>5.9</u>
Total	<u>80</u>	<u>\$3,857,795,000</u>	<u>8,637</u>	<u>960</u>
Overall Average		\$ 48,222,438	108	12

Of the 224 employees in the sample, most were males and age 39 or younger. Characteristics of the E-1 and E-2 employees in the sample are summarized in tables III.2 and III.3.

Table III.2: Characteristics of Japanese Who Are Issued an E-1 (Trader) Visa

<u>Characteristic</u>	<u>Age 39 and younger</u>	<u>Age 40 and older</u>	<u>Total</u>
Percent with college education	84.2	82.4	83.6
Average length of company experience	12.5 years	21.0 years	15.5 years
Average salary	\$55,631	\$77,038	\$63,148
Average number of employees supervised	3.8	20.0	9.8
Average number of dependents accompanying the applicant	1.8	2.4	2.0

Table III.3: Characteristics of Japanese Who Are Issued an E-2 (Investor) Visa

<u>Characteristic</u>	<u>Age 39 and younger</u>	<u>Age 40 and older</u>	<u>Total</u>
Percent with college education	85.2	77.8	82.7
Average length of company experience	10.3 years	16.7 years	12.4 years
Average salary	\$47,195	\$69,903	\$54,520
Average number of employees supervised	11.5	22.8	15.6
Average number of dependents accompanying the applicant	1.8	1.1	1.6

The employees occupied a variety of positions, including staff accountant, warehouse manager, department or section manager, treasurer, technical representative, branch manager, vice president, and president. Based on the job titles and limited position descriptions, the large majority of the positions appear to be in mid- to upper management. This is also reflected in the salary distribution as shown in table III.4.

Table III.4: Salary Distribution for E-Visa Holders

<u>Salary range</u>	<u>Number</u>	<u>Years of experience</u>	<u>Average</u>
\$0 to \$24,999	19	10.5	\$20,876
\$25,000 to \$49,999	79	12.6	\$38,879
\$50,000 to \$74,999	78	15.9	\$58,642
\$75,000 to \$99,999	22	17.5	\$85,851
\$100,000 to \$124,999	18	12.7	\$112,950
\$125,000 to \$149,999	5	14.2	\$133,400
\$150,000 to \$174,999	5	15.2	\$164,200
\$175,000 to \$199,999	1	25.0	\$190,000

L-VISA HOLDERS

From a sample of 41 L-visa applications, we developed the following profiles on the users of the L-visa. Of the 41 employees, 26 were managers/executives and 15 had specialized knowledge. All 41 employees were Japanese males between the ages of 25 and 54. Their salaries ranged from \$19,600 to \$140,000 per year, length of services ranged from 4 to 27 years, and the number of employees they supervised ranged from zero to 37. The characteristics of the employees in the sample are summarized in table III.5.

Table III.5: Characteristics of Japanese Issued an L-Visa Between December 1, 1986, and February 28, 1987

<u>Characteristic</u>	<u>Age 39 and younger</u>	<u>Age 40 and older</u>	<u>Total</u>
Percentage with college education	55	40	51
Average length of company experience	7.8 years	22.4 years	11.3 years
Average salary	\$46,854	\$60,822	\$49,997
Average number of employees supervised	3	11	5
Average number of dependents accompanying the applicant	1	1	1

OBJECTIVE, SCOPE, AND METHODOLOGY

In response to your letter of September 8, 1986, and subsequent discussions with your office, we reviewed the U.S. process for granting E- and L-visas to Japanese business people, developed profiles on the Japanese companies and employees using these visas, and developed information on Japan's visa system. We conducted work at the U.S. embassy in Tokyo and the U.S. consulate in Osaka, which were responsible for issuing 70 percent of the visas in Japan, and at the Department of State and INS in Washington, D.C.

To develop profiles on Japanese E-visa users, we compiled data on 80 companies and 224 employees. The companies were selected by sequentially numbering the company files maintained by the embassy and consulate and selecting a sample using a computer-generated list of random numbers. Information on E-visa employees was then obtained by reviewing data in the embassy or consulate company files on the employees that had been issued visas in 1986.

To develop profiles on Japanese L-visa users, we selected 41 L-visa holders from listings of L-visas that had been issued during the period December 1, 1986, through February 28, 1987, by the embassy and the Osaka consulate. For our sample, we selected every tenth name on the listings, starting with a randomly selected number.

The profiles were developed based solely on the information furnished by the applicant or the employing company. We did not attempt to verify the information furnished on any of the E- or L-visa cases. Our profile of the L-visa holders was further limited by the fact that relevant information was not always provided by the applicant or the employer in completing the necessary application forms.

We discussed Japan's visa system with U.S. embassy officials and met with officials from Japanese government agencies--the Ministry of Foreign Affairs and the Ministry of Justice--that are primarily responsible for issuing visas and controlling the entry of foreigners. We collected available documents and discussed with cognizant officials the procedures used to adjudicate and approve business visas. In addition, the U.S. embassy arranged meetings with officials of the American Chamber of Commerce and five large U.S. companies in Japan so that we could learn their views and experiences in obtaining visas from the Japanese government.

Japanese Ministries of Foreign Affairs and Justice officials told us that their criteria for approving visa applicants are restricted and not available for public disclosure. Because the Japanese would not disclose their visa criteria, we could not determine if reciprocity existed.

We were also unable to obtain information on the number of visas that were refused by the Japanese government. A Ministry of

Foreign Affairs official stated that the government's policy was not to disclose this information.

Our work was performed between November 1986 and July 1987 in accordance with generally accepted government auditing standards.

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