

E-3: Australian Special Occupation Visa

A product of the recent U.S.-Australia free trade agreement is the E-3 visa, another new nonimmigrant visa category, which is also similar to the H-1B. It applies to Australian nationals entering the United States to work in a specialty occupation.¹⁷ The H-1B's definition of "specialty occupation" and evidentiary requirements also apply to the E-3.¹⁸

This nonimmigrant visa is also similar to the H-1B1 in that the sponsoring employer does not need to petition DHS as a prerequisite for visa issuance, but the applicant does need to present a certified Labor Condition Application.¹⁹ The E-3 applicant may apply for a visa directly at a U.S. consulate.

The E-3 visa is valid for two years and is indefinitely renewable.²⁰ However, the E-3 visa holder must demonstrate intent to depart upon termination of status.²¹

Spouses and children of E-3 nonimmigrants are also entitled to visas, called E-3Ds, regardless of whether they are Australian citizens. In order to qualify for an E-3D visa, the spouse or child must provide proof of their qualifying relationship to the principal such as a marriage or birth certificate as well as proof that the principal applicant holds an E-3 visa. Spouses may be employed in the United States as long as they obtain an Employment Authorization Document from DHS.²²

The maximum number of E-3 visas that may be issued in a year is 10,500.²³ Spouses and children of the E-3 nonimmigrant do not count against this numerical limit.²⁴ E-3 visas do not count toward the H-1B cap as the H-1B1 visas do.

¹⁷INA § 101(a)(15)(E)(iii).

¹⁸9 FAM § 41.51, n. 16.1.

¹⁹9 FAM § 41.51, n. 16.1(c), 3 to 4.

²⁰9 FAM § 41.51, n. 16.9, 16.10.

²¹9 FAM § 41.51, n. 16.6.

²²INA § 212(e)(6); 9 FAM § 41.51, n. 18; Memorandum of USCIS Acting Assoc. Dir. Domestic Operations Michael Aytes "Processing Guidelines for E-3 Australian Specialty Occupation Workers and Employment Authorization for E-2 Dependent Spouses," (Dec. 15, 2005).

²³9 FAM § 41.51, n. 16.1(d).

²⁴9 FAM § 41.51, n. 17.2.