

QUESTIONS AND ANSWERS - REVISED ATF F4473 (APRIL 2012 EDITION)

Q1. Who is a nonimmigrant alien?

A1. Generally, “nonimmigrant aliens” are tourists, students, business travelers, and temporary workers who enter the U.S. for fixed periods of time; they are lawfully admitted aliens who are not lawful permanent residents. In order to meet the definition of a nonimmigrant alien, the individual **MUST** hold a nonimmigrant visa. The definition does **NOT** include permanent resident aliens, aliens legally admitted to the U.S. with a visa other than a nonimmigrant visa, or aliens legally admitted to the U.S. without a visa.

Q2. How does the reinterpretation of the Gun Control Act’s firearms disabilities for certain nonimmigrant aliens impact nonimmigrant aliens?

A2. There is no change with respect to nonimmigrant aliens who were admitted under a nonimmigrant visa. The interpretation of the Gun Control Act affects aliens who are lawfully in the United States without a nonimmigrant visa.

Nonimmigrant aliens lawfully admitted to the United States without a visa (e.g. Visa Waiver Program), will not be prohibited from shipping, transporting, receiving, or possessing firearms or ammunition, provided that they meet State of residency requirements and are not otherwise prohibited from shipping, transporting, receiving, or possessing firearms.

Q3. May a nonimmigrant alien who has been admitted to the United States under a nonimmigrant alien visa purchase or possess a firearm in the U.S.?

A3. An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien falls within one of the following exceptions: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State, or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) has received a waiver from the prohibition from the Attorney General of the United States; (4) is an official representative of a foreign government who is accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States; (5) is en route to or from another country to which that alien is accredited; (6) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (7) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

In addition, a nonimmigrant alien legally in the United States with or without a nonimmigrant visa may lawfully acquire a firearm **only** if he/she meets State of residence requirements as required by the Federal government. For more information, see ATF Ruling 2010-6 at: <http://www.atf.gov/regulations-rulings/rulings/atf-rulings/atf-ruling-2010-6.pdf>.

Q4. *If I'm a nonimmigrant alien legally in the United States with a nonimmigrant visa, what documentation must I provide to the Federal firearms licensee (FFL) prior to acquiring a firearm?*

A4. It is unlawful for a FFL to sell or deliver any firearm to any nonlicensee who the licensee knows or has reasonable cause to believe does not reside in the State in which the licensee's place of business is located. Exceptions are provided for over-the-counter transfers of a rifle or shotgun to out-of-State residents if the transfers fully comply with the State laws of the buyer and seller, and for loans and rentals of a firearm for temporary use for lawful sporting purposes.

To acquire a firearm, you must demonstrate the intention of making a home in a particular State. The intention of making a home in a State must be demonstrated to a Federal firearms licensee by presenting valid government issued identification documents indicating an address in the state in which the licensee's place of business is located. Such documents include, but are not limited to, driver's licenses, voter registration, tax records, or vehicle registration. For more information, see ATF Ruling 2001-5 available at: <http://atf.gov/regulations-rulings/rulings/atf-rulings/atf-ruling-2001-5.html>.

In addition, you must also demonstrate that you fall within one of the exceptions outlined in 18 U.S.C. 922(y)(2). (Refer to Question #3 above).

Q5. *I'm a nonimmigrant alien lawfully present in the United States without a visa. May I purchase or possess a firearm in the United States?*

A5. A nonimmigrant alien who is lawfully admitted to the United States without a visa (e.g. Visa Waiver Program), may acquire or possess a firearm in the United States, provided that he or she is not prohibited from shipping, transporting, receiving, or possessing firearms or ammunition in the U.S.

In addition, a nonimmigrant alien legally in the United States with or without a nonimmigrant visa may lawfully acquire a firearm **only** if he/she meets State of residence requirements as required by the Federal government. For more information, see ATF Ruling 2010-6 at: <http://www.atf.gov/regulations-rulings/rulings/atf-rulings/atf-ruling-2010-6.pdf>.

These requirements are irrespective of the licensed status of the individual from whom the alien is purchasing the firearm. An unlicensed individual is prohibited from selling a firearm to an out-of-State resident. A Federal firearms licensee (FFL) is prohibited, with few exceptions, from transferring a firearm to an out-of-State resident.

Q6. *What is the Visa Waiver Program?*

A6. The Visa Waiver Program enables nationals from participating countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa. Participating countries can be found at the Department of State website available at: http://travel.state.gov/visa/temp/without/without_1990.html.

Q7. *Does a nonimmigrant alien lawfully present in the United States with or without a visa have to comply with the 90 day residency requirement?*

A7. No. The 90 day residency requirement is no longer in effect. However, a nonimmigrant alien who is lawfully present in the United States must comply with State of residence requirements as required by the Federal government. For more information, see ATF Ruling 2010-6 at: <http://www.atf.gov/regulations-rulings/rulings/atf-rulings/atf-ruling-2010-6.pdf>.