



Employment Based Pathways to Permanent Residence

140,000 Green Cards are available annually for skilled and unskilled workers seeking to obtain permanent residence. These are distributed through an employment-based preference system which is divided into five categories.

The first preference (or EB-1) category is reserved for Multi-national Managers and Executives, Employees of “Extraordinary Ability” and “Outstanding” Researchers or Professors. The second preference (EB-2) category covers those positions which require at least a Master’s degree or a Bachelor’s degree and 5 years of experience. It also includes employees who can demonstrate “Exceptional Ability.” An E-2 applicant’s work may also be of such national importance as to warrant a “National Interest Waiver,” which would exempt them from the labor certification process described below.

The third preference (EB-3) category is the most common category utilized by about 80% of all employment-based immigrants. This category is for positions requiring a Bachelor’s degree and less than 5 years of experience, or positions requiring no degree and at least 2 years of experience. There is also an “unskilled worker” subcategory for positions requiring no experience whatsoever.

The EB-4 category for Special Immigrants and Religious Workers and the EB-5 category for Immigrant Investors seeking to invest between \$500,000 and \$1,000,000 in a U.S. business are the most rarely used of the employment based immigrant visa categories. Most employees seeking Permanent Residence are already in the US in a non-immigrant visa status. Typically they are here in H-1B status or L-1 status (either as L-1A managers or L-1B specialized knowledge employees). While those who are in L-1A status may qualify to upgrade to EB-1 multi-national manager status, most employees cannot demonstrate extraordinary or exceptional ability, and ultimately fall into either the EB-2 or EB-3 category. Current immigration law requires that an employer demonstrate that there are no qualified available American workers before they can sponsor a worker employed under a temporary non-immigrant visa for a green card. This process is known as labor certification and all cases processed in the EB-2 and EB-3 category are subject to it, except for those qualifying for a National Interest Waiver in the EB-2 category noted above.

To demonstrate that no qualified American exists, an employer follows the PERM rules, which require that the employer advertise and recruit extensively under complex and detailed regulations. If no U.S. worker is found as a result of this recruitment, the employer can then file an electronic PERM application with the U.S. Department of Labor, which takes from 3 months to 2 years to be processed. Once PERM is approved, the employer then files an immigrant petition with USCIS to establish which preference category the job qualifies under. Based on the number of available visas in that preference category there may or may not be a waiting list which may cause further delay in processing the individual’s green card case.

In addition to limitations on available visas per category, there are also per country limitations which often result in long waiting lists for individuals from countries like India and China where there is high demand for green card processing particularly for highly skilled professionals. The wait for individuals from these countries even after a PERM approval has been achieved can sometimes be as long as 6 to 8 years! Not until a visa number is actually available can an employee file their application for adjustment to green card/permanent resident status. Those filing in the EB-1, EB-4 and EB-5 category do not face such waits and can usually file the green card application with the employer’s petition and usually obtain their green cards within 12 to 18 months.

To initiate the green card process with our office, we suggest that you contact us and discuss the details of the offered position and the employee’s qualifications. We can then determine which of the categories best suits the employee and present you with the best strategy to move forward.

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