

Frequently Asked Questions

Employment-Based Permanent Resident Status or “Green Card”

Q. What is a “green card”?

A. A green card, also known as a “Permanent Resident Card”, “Alien Registration Receipt Card” or “Form I-551” is a plastic card which documents that an individual has the authority to live and work in the U.S. indefinitely (called “lawful permanent residence”). This identification document is mostly commonly known as the “green card” because, at one time, it was green. Currently, the card is white and contains the individual’s photo, fingerprint, signature as well as other identifying information. While the card itself may expire and have to be renewed, the individual’s status as a lawful permanent resident (LPR) remains in effect unless it is abandoned or taken away.

Q. Who is eligible to apply for permanent resident status or a green card?

A. There are five categories of individuals who are eligible to apply for permanent resident status. They are:

1. Family-Sponsored Immigrants (Spouses, sons and daughters, and parents of U.S. citizens, and spouses and unmarried sons and daughters of permanent residents).
2. Employment-Based Immigrants (see below).
3. Investment-Based Immigrants (Investors of \$500,000 - \$1 million in a U.S. business that creates jobs for ten U.S. workers).
4. Refugee and Asylum (Persons fleeing persecution in their home countries).
5. Diversity (DV) Lottery (Persons from countries with below-average immigration to the U.S. selected in an annual lottery).

Q. What is the process for obtaining an employment-based green card?

A. The process may involve two or three steps. If an individual qualifies as extraordinary in his or her field or the individual's employment is in the "national interest", then the *individual or his or her employer* is required to file the Form I-140, Petition for Immigrant Worker, with supporting documentation. If the individual qualifies as a multinational manager or outstanding researcher, then the *employer* must file the I-140 petition. However, if the individual does not fall into one of these categories, then the employer must complete the labor certification process prior to filing the Form I-140. Concurrently with the filing of the I-140 petition, the individual may be eligible to file Form I-485, Application to Register Permanent Residence or Adjust Status.

Q. Is it necessary to be sponsored by an employer?

A. No. If an individual qualifies as extraordinary in his or her field or if his or her work is in the "national interest," then he or she may file a self-sponsored petition.

Q. What is the labor certification process?

A. Protections for U.S. workers are built into the system. Most employment immigrant cases require Department of Labor certification that no U.S. workers are able, qualified or willing to take the position offered to the foreign national and that admitting the immigrant will not negatively impact the wages and working conditions of similarly situated U.S. workers.

Q. Who can qualify without the labor certification process?

A. The categories exempt from this requirement are those individuals who are recognized to be extraordinary in their field, whose employment is in the "national interest," or who are outstanding professors or researchers, multinational managers, investors, certain religious ministers or workers, and a small number of "special immigrants."

Q. How long will it take to obtain a green card?

A. It is quite difficult to accurately predict exactly how long the process will take. Employers must consider the processing time for petitions and applications at the United States Citizenship and Immigration Services' Regional Service Centers, the PERM process for labor certification processing for the Department of Labor and also the availability of visa numbers. No approval is guaranteed. Cases may take anywhere from 18 months to four years or more depending on these factors.

Q. May the employee remain in the U.S. during the immigrant process?

A. An employee may not remain in the U.S. merely because a labor certification or immigrant visa petition is pending. The entire process may take place in the U.S. if the individual is able to maintain his or her valid nonimmigrant visa status (J-1, H-1B, L-1, etc.) until the Form I-485, Application to Register Permanent Residence or Adjust Status can be filed. Once the I-485 is filed, the employee may remain in the U.S. until it is adjudicated.

Q. May an individual work while a petition is pending?

A. An individual may not be employed in the U.S. merely because a labor certification or immigrant visa petition is pending. An individual may work while a petition is pending if he or she is authorized for employment in the U.S. by maintaining a valid nonimmigrant working visa status such as H-1B or L-1. In addition, he or she may file a Form I-765, Application for Employment Authorization, at the same time the Form I-485 package is submitted. Approval of the Employment Authorization Document (EAD) allows the individual to work even without a valid nonimmigrant working visa status.

Q. May an individual travel while their petition is pending?

A. An individual may travel during the labor certification process and while the I-140 is pending if he or she has a valid nonimmigrant visa. An individual may travel while the I-485 adjustment is pending if he or she has obtained an advance parole document and/or is currently in valid H-1B or L-1 status.

Q. What happens if an individual switches jobs or changes employers while a petition is pending or after it has been approved?

A. For an employer-sponsored petition, a change in employer (or even location of employment) will likely mean that the process must start over from the beginning unless the change takes place more than 180 days after the filing of the I-485 package and the change is to a position in the "same or similar" occupation. Self-petitioners who change employment within their field will usually be able to continue with the pending petition.

Q. After having received an immigrant petition approval notice, when can an individual expect to be scheduled for an interview?

A. If an individual elects to complete the process abroad at a U.S. Consulate, it could take four to ten months before an appointment is scheduled. If he or she elects to remain in the U.S., the adjustment of status process can take from 12 to 24 months or more.

Q. How long must a legal permanent resident (LPR) remain with an employer?

A. There is no required amount of time that an LPR must remain with an employer. LPRs must be able to demonstrate that their *intention at the time of adjustment to LPR status or entry as an immigrant* is to remain with the sponsoring employer indefinitely.

Q. Is there any required amount of time that an LPR must remain in the U.S.?

A. Yes. Absences of one year or more may result in loss of LPR status unless a reentry permit is applied for in advance of departure from the U.S. Absences of six months or more may result in questioning upon return to the U.S. as to whether the LPR has abandoned his or her residence in the U.S.

Q. Does an LPR lose his or her citizenship?

A. No, LPR status in the U.S. does not affect one's citizenship of another country.

Q. May an LPR apply for U.S. citizenship?

A. Yes. An LPR may apply for naturalization as a U.S. citizen after maintaining LPR status for five years, assuming certain residence and physical presence requirements are met. If an individual is married to and living with a U.S. citizen, then he or she may apply after maintaining LPR status for three years.

Q. Is an LPR required to give up his or her citizenship if he or she applies for naturalization as a U.S. citizen?

A. The U.S. can only confer U.S. citizenship on an individual, and cannot force a person to lose any other citizenship which they hold. In some instances, an individual's country of citizenship will regard the person as having lost citizenship in his or her country of nationality when he or she becomes naturalized as a U.S. citizen. Individuals who wish to maintain dual citizenship should consult with officials of their country of current citizenship.

Q. May a spouse and dependent children (unmarried children under the age of 21) be included in the I-140 petition and subsequent I-485 adjustment of status application?

A. Yes, a spouse and dependent children may be included.

Q. Are spouses and/or dependent children eligible to apply for employment authorization and an advance parole travel document?

A. Yes, all applicants who apply for adjustment of status are eligible to apply for employment authorization and advance parole.