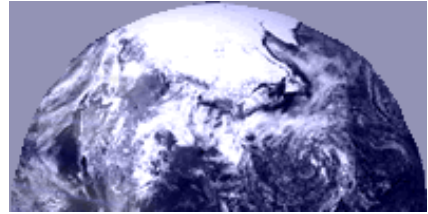


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Providing U.S. & Global Immigration Solutions
to Businesses Around the World



Employment-Based Green Card Portfolio

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1 EMPLOYMENT-BASED PERMANENT RESIDENCY (“PERM” GREEN CARD PROCESS)

The most common method of obtaining a green card through a company sponsorship is through the “PERM” labor certification green card process. This three-step process involves:

- Filing a PERM labor certification application with the U.S. Department of Labor (“DOL”);
- Filing an I-140 immigrant visa petition with the U.S. Citizenship and Immigration Services (“USCIS”); and
- Filing an I-485 adjustment of status application with the USCIS.

1.1 THE “PERM” PROCESS

The U.S. Department of Labor’s “PERM” labor certification system is designed to streamline the labor certification process so that it no longer takes 3-5 years to obtain a labor certification. Rather, the DOL’s goal is to have every application adjudicated within 45- 60 days. With this new system, however, comes additional scrutiny by the DOL. For example, before recruitment can begin for a PERM application, a sponsoring employer must obtain a prevailing wage determination by the State where the sponsoring employer is located. This is determined by a new, complicated prevailing wage analysis system. This system incorporates the DOL’s standards regarding the level of qualifications required for each position available in the United States. It also incorporates the actual requirements set forth by the sponsoring employer. As such, the level of review for each position being sponsored has increased under the new PERM system.

1.1.1 RECRUITMENT UNDER PERM

Before a U.S. employer may sponsor a foreign national for a green card, it must prove to the U.S. Department of Labor that there are no U.S. workers “ready, willing and able” to perform the job for which the foreign national is being sponsored. This is done through the PERM recruitment process.

There are several mandatory recruitment steps for all PERM applications. There are also additional steps required for “professional” positions. A “professional” position is one that is defined by the U.S. Department of Labor as a position that typically requires U.S. bachelor’s degree or greater for a candidate to be qualified for the position. All recruitment in preparation for filing a PERM application must be performed for at least 30 days. The recruitment must be started no earlier than 180 days before a PERM application is filed, and must be completed at least 30 days before a PERM application is filed. However, for “professional” positions, one of the additional recruitment steps may be performed within 30 days of the filing of a PERM application.

1.1.2 THE PERM APPLICATION PROCESS

Once a PERM application is filed, the DOL’s new computer system will analyze the application to determine whether it fits the criteria requiring an audit by the DOL. If not, the computer will still randomly select applications for routine audits. Even if the computer system does not flag an application for an audit, a DOL representative may still review the application manually and flag it for an audit. If audited, an employer has only 30 days to respond to the DOL. As such, every employer must assume it will be audited by the DOL and be prepared for such an eventuality.

1.2 THE IMMIGRANT VISA PETITION AND ADJUSTMENT OF STATUS PROCESS

If the foreign national is in the United States, once the labor certification process is certified by the DOL, the sponsoring employer files an I-140 Immigrant Petition for Alien Worker with the USCIS. The purpose of an I-140 is to demonstrate to the USCIS that the sponsored employee has the qualifications as set forth in the PERM application, and that the sponsoring employer has the ability to pay the wage proffered in the PERM application.

If visa numbers are available, the sponsored employee can also file an I-485 Application for Adjustment of Status, along with an I-765 Application for an Employment Authorization Document ("EAD") and an I-131 Application for an Advance Parole Travel Document. The purpose of the I-485 is to request that the USCIS convert the applicants' immigration status from "nonimmigrant" to "immigrant", or "permanent resident".

An EAD allows a foreign national to stop relying upon his or her nonimmigrant status for work authorization.

An advance parole is an advance approval by the USCIS for a foreign national to travel outside of the United States while his or her adjustment of status is pending. Without an advance parole, a foreign national will be deemed to have abandoned his or her adjustment of status application by exiting the United States. If an employee travels on an advance parole, he or she is not dependent upon his or her nonimmigrant status, but can only travel on his or her advance parole (and work on his or her EAD).

One major benefit of the EAD and advance parole applications is that a person on advance parole need not renew their nonimmigrant visas at a U.S. Embassy or consulate. This is seen as a significant benefit by most foreign nationals.

Another major benefit is that after a foreign national's I-140 has been approved and his or her I-485 has been pending for at least 180 days, the foreign national may transfer his or her green card application to a new employer. This provides some flexibility to a foreign national whose I-485 has been pending for a long time.

1.3 FORMS FILED AS PART OF AN I-485 APPLICATION

1.3.1 FORM G-28, NOTICE OF ATTORNEY REPRESENTATION

This form notifies the CIS the Thompson Immigration is representing you in this process. This form is required for each application being filed.

1.3.2 FORM I-485, APPLICATION FOR ADJUSTMENT OF STATUS

This form actually requests that the CIS convert an applicant's your status from "nonimmigrant" to "immigrant" (*i.e.*, a permanent resident).

1.3.3 FORM G-325, BIOGRAPHICAL INFORMATION

This form provides basic biographical information to the CIS.

1.3.4 BIOMETRICS

Each applicant 14 years old or older must have their "biometrics" (*i.e.*, fingerprints) electronically taken before they can get their green card. No form is required, but there is an \$80.00 filing fee associated with this process.

Once the I-485 Application is filed, each applicant will receive a Notice requiring them to go to the local CIS office to have their biometrics taken.

1.3.5 FORM I-765, APPLICATION FOR EMPLOYMENT AUTHORIZATION (OR “EAD”)

This form allows an applicant to work as a “prospective immigrant” while their green card application is pending. *This Application is very important, especially for H1B workers.* With an EAD, a foreign national can “port” (or transfer) their green card application to another employer should something happen to his or her original sponsorship. Such porting is allowed if the applicant’s I-140 Petition has been approved, and their I-485 Application has been pending for at least 180 days. For this reason, Thompson Immigration always recommends applying for an EAD.

There used to be a filing fee for this form. However, this fee has been eliminated for those applications filed concurrently with an I-485 Application. EAD extensions still have a filing fee associated with them.

Currently, most EAD applications are approved within 30 days of filing. However, if it is not approved during this time period, a foreign national may go to the local CIS office and obtain a temporary EAD card.

1.3.6 FORM I-131, APPLICATION FOR TRAVEL DOCUMENT (OR “ADVANCE PAROLE”)

This form is an “advanced approval” from the CIS for a prospective immigrant to travel internationally. *Having this advance parole is very important.* Without this advance approval, anyone traveling internationally will be deemed to have abandoned their green card application.

H1B/H4 and L-1/L-2 nonimmigrants who intend to keep their nonimmigrant status current do not need to apply for advance parole. They can re-enter the United States based on their nonimmigrant status. However, in order for an H1B worker to be allowed to port his I-485 Application to another employer, they must be working as a prospective immigrant (on an EAD). Once someone is working as a prospective immigrant, they must also travel as a prospective immigrant (on an advance parole). For this reason, Thompson Immigration always recommends applying for an advance parole.

There used to be a filing fee for this form. However, this fee has been eliminated for those applications filed concurrently with an I-485 Application. Advance parole extensions still have a filing fee associated with them.

1.3.7 FORM I-864, AFFIDAVIT OF SUPPORT

In order for a foreign national to obtain permanent residency within the United States, it must be shown that he or she will earn enough money to not become a public charge (*i.e.*, receive public benefits). Form I-864 is the form used to demonstrate that sufficient income is available from some source (either the applicant or a family member) to ensure the applicant (and his family) will not become public charges.

- For an employment-based case, this is usually done by showing that the sponsoring employer is paying sufficient wages to meet this requirement.
- For a family-based case, this is usually done by showing that the family sponsor’s salary (by itself or in conjunction with a third parties’ salary, such as a parent) is sufficient to meet this requirement.

1.4 I-485 PROCESSING “PRIORITY DATES”

There is a lot of confusion with regard to which dates are used to determine when a foreign national’s I-485 application will be processed by the USCIS. This is because there are two sets of dates that must be examined.

1. The first is the U.S. State Department’s Visa Bulletin “*priority date*”, which indicates who may file an I-485 Application.
2. The second is the USCIS’ I-485 “*processing date*”, which identifies what I-485 applications are physically being processed by the USCIS.

There are a limited number of immigrant visas (*i.e.*, green cards), available each government fiscal year. These numbers are managed by the U.S. State Department, with input from the USCIS. A foreign national may only file an I-485 if there is an immigrant visa available. If the number of I-485 applications exceed the number of visas that are available, then the State Department moves the “*priority date*” for that category of immigrant visas backwards (*i.e.*, the *priority date* retrogresses). If this happens, then no foreign national may file an I-485 application until the *priority date* reaches that specific individual’s *priority date*. For example:

1.4.1 STEP 1: STATE DEPARTMENT “PRIORITY DATE”

1. For employment-based cases, a foreign national’s “*priority date*” is usually the date his or her PERM labor certification application was filed.
2. For purposes of this example, assume that a foreign national’s PERM was filed on July 1, 2005.
3. Once the foreign national’s PERM is approved, he or she may file an I-140 petition no matter what the State Department *priority date* is. This is because there are no numerical limitations for I-140 petitions.
4. If the State Department’s current *priority date* is *earlier than* July 1, 2005 (*e.g.*, January 1, 2002), then no immigrant visa is available for this particular foreign national. In this case, the foreign national may file an I-140 petition, but they may not file an I-485 application. Instead, they must wait until the State Department’s *priority date* reaches July 1, 2005, before they can file an I-485 application.
5. However, if the State Department’s current *priority date* is July 1, 2005, or *later* (*e.g.*, October 20, 2006), then the foreign national may file both an I-140 petition and an I-485 application at the same time.

1.4.2 STEP 2: USCIS I-485 APPLICATION “PROCESSING DATE”

1. Once an I-485 application is filed, the foreign national may go to the USCIS web site and check what “*processing date*” the USCIS is working on. The USCIS will process all I-485 applications:
 - a. Whose I-140 petitions have been approved;
 - b. Whose State Department *priority dates* are “*current*” (*i.e.*, the State Department’s *priority date* is on or before the foreign national’s *priority date*); and
 - c. Whose I-485 application was filed on or before the USCIS’ current *processing date*.
2. However, if the State Department *priority date* retrogresses (which happens often) after the foreign national’s I-485 application is filed, then the USCIS will stop processing all I-485 applications whose *priority dates* are later than the current State Department *priority date*.
3. In our example, if the foreign national files his or her I-485 application on September 1, 2006, but then the State Department *priority date* retrogresses from October 20, 2006, to January 1, 2002, then the USCIS will stop processing the foreign national’s I-485 application even though the USCIS is processing I-485 applications that were filed on or before September 1, 2006.