
THE VISANOW GUIDE TO GREEN CARDS



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INTRODUCTION

In an increasingly competitive global market, the best talent is critical to success. But it can be difficult to find qualified candidates to fill key positions in specialized or highly skilled roles. For many companies, the solution lies in the **global labor market** – and bringing the right candidate home to the United States.

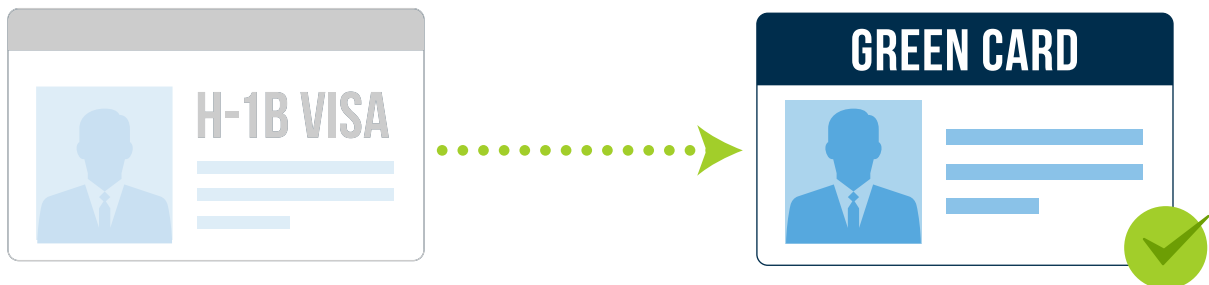


EMPLOYMENT-BASED GREEN CARDS

Employment-based (EB) green cards are a valuable tool to attract and retain foreign talent, allowing U.S.-based companies to maximize their competitive edge and promote economic growth. Green cards also provide stability and longevity that many foreign nationals seek, which helps businesses reduce turnover and grow at a faster rate.

In most situations, companies transfer an employee living in the United States from a dual-intent temporary visa, such as the H-1B Person in Specialty Occupation or L-1A Intracompany Transferee for Executives or Managers visa, to a green card.

Unlike the H-1B and other nonimmigrant visa statuses, recipients of the employment-based green card intend to **stay in the United States** permanently.





BUT IT'S NOT ALWAYS EASY.

Obtaining a U.S. employment-based green card is a complex, multi-step process that consumes time and resources. Once an employer decides to begin the petition process, the next step is to learn which **green card category** the foreign national qualifies for, and what to expect throughout the application process.

This green card guide features:

- ✓ **THE MOST WIDELY USED EMPLOYMENT-BASED GREEN CARDS**
- ✓ **KEY HR TAKEAWAYS**
- ✓ **THE PERM LABOR CERTIFICATION PROCESS**
- ✓ **THE GREEN CARD APPLICATION PROCESS**
- ✓ **AN OVERVIEW OF THE VISA BULLETIN TABLE**

01

VISA TYPE

EB-1: PRIORITY WORKERS

EB-1 is one of the most desirable green card options because it does not require companies to complete the permanent labor certification (PERM) process. This results in a significantly faster processing time. EB-1 green cards are available for **priority workers**, classified by U.S. Citizenship and Immigration Services (USCIS) as:

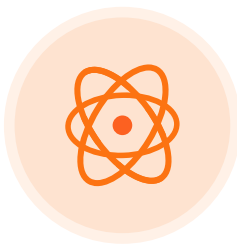
- 1 **Workers of extraordinary ability.**
- 2 **Outstanding university professors or researchers.**
- 3 **Executives or managers of multinational companies.**



WHO QUALIFIES?

WORKERS OF EXTRAORDINARY ABILITY

Workers of **extraordinary ability** are defined as those with specific expertise in the sciences, arts, education, business or athletics.



Requirements:

- ▶ Documentation of at least three notable, public achievements and recognitions that demonstrate sustained national or international acclaim as an industry leader.

OR

- ▶ Proof of a **major** one-time achievement, such as receiving a Pulitzer Prize, Academy Award, Olympic medal, etc.

EXAMPLES: PUBLIC ACHIEVEMENTS AND INTERNATIONAL ACCLAIM



- Receiving nationally or internationally recognized prizes or awards for excellence
- Membership in associations that demand outstanding achievement of their members
- Published material in professional or major trade publications
- Original scientific, scholarly, artistic, athletic or business-related contributions of major significance

OUTSTANDING UNIVERSITY PROFESSORS OR RESEARCHERS



Outstanding university professors or researchers may qualify for an EB-1 green card if they are held in high esteem in the international academic community for their achievements.

Requirements:

- ▶ Three years of experience in teaching or research in a specific academic area.
- ▶ An offer of employment from a college or university, in a position that offers tenure or a track to tenure.
- ▶ At least two qualifying examples of documented achievement.

EXAMPLES: DOCUMENTED ACHIEVEMENT

- Extensive publication in a given academic field
- Documentation of awards or major achievements in that field
- Evidence of original, groundbreaking research

EXECUTIVES OR MANAGERS OF MULTINATIONAL COMPANIES

Executives or managers of multinational companies being transferred to jobs in the United States may be eligible under the EB-1 category if they meet the guidelines below.

Requirements:

- ▶ Worked for a multinational company outside of the United States for at least one of the three years preceding submission of an EB-1 green card petition.
- ▶ Previously worked in a managerial or executive role.
- ▶ The U.S. employer must prove it has been in business for at least one year and provide evidence of the foreign national candidate's professional experience level.

KEY HR TAKEAWAYS

- ! EB-1 green cards require a very specific candidate whose achievements are nationally and internationally renowned – meaning qualifying candidates are rare.
- ! This option is less time- and resource-intensive, as there is no labor certification requirement for any of the three subtypes compared to other green card categories.

QUALIFYING QUESTIONS

Is the employee a **priority worker with extraordinary ability**, an outstanding **professor or researcher**, or **executive or manager** of a multinational company being transferred to the United States?

YES

NO

If the employee possesses **extraordinary ability** or is an outstanding professor or researcher, is there ample and available evidence of national and/or international acclaim for his or her achievements?

YES

NO

If the employee is an executive or manager being transferred to the United States, has he or she worked at least one year (of the last three) for a company overseas, related to the U.S. entity that proposes to sponsor him or her?

YES

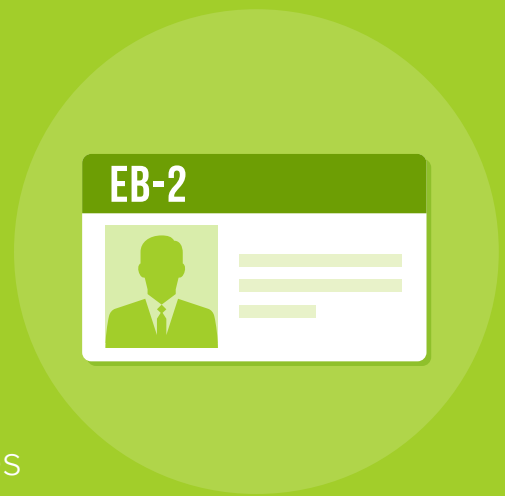
NO

If you answered **YES** to any of these questions, the EB-1 green card may be an option for your employee. To confirm eligibility for your foreign national, contact VISANOW at **(855) 840-8046** or visit us at www.VISANOW.com/contact-us/.

02

VISA TYPE

EB-2: ADVANCED WORKERS



The second type of employment-based green card has laxer eligibility guidelines than EB-1. However, the permanent labor certification (PERM) process is a prerequisite.

Qualified applicants include:

- 1 Professionals who hold advanced degrees.
- 2 Foreign nationals with exceptional ability in the sciences, arts or business.
- 3 Professionals whose work benefits the national interest of the United States.

WHO QUALIFIES?



PROFESSIONALS HOLDING ADVANCED DEGREES

The professional must have earned an advanced academic degree or equivalent to qualify.

Requirements:

- ▶ The job being filled must normally call for a worker with specific higher education.
- ▶ Foreign nationals must provide official academic records or diplomas.
- ▶ Equivalent work experience requires evidence of an undergraduate degree, as well as letters from current (or former) employers showing at least five years of progressive work experience in a specific specialty or field.

FOREIGN NATIONALS WITH EXCEPTIONAL ABILITY IN THE SCIENCES, ARTS OR IN BUSINESS

Professions include: lawyers, doctors, physicists, economists, analysts, professional athletes, artists and opera singers.

Requirements:

- ▶ Evidence of three qualifying criteria must be shown.



EXAMPLES: QUALIFYING CRITERIA

- Evidence of extensive higher education
- Letters of recommendation from renowned peers in the field
- Membership in a respected and related professional association



PROFESSIONALS WHOSE WORK BENEFITS THE NATIONAL INTEREST OF THE UNITED STATES.

Professionals with **exceptional ability**, and whose employment in the United States has a profoundly positive national impact, may be eligible for a **National Interest Waiver**.

Applying for a National Interest Waiver does not require the PERM process nor a formal job offer.

Requirements:

- ▶ Must provide evidence that work will have favorable impact on the United States, and benefit one of the following:
 - The U.S. economy
 - Wages and working conditions of U.S. workers
 - Education and training programs for U.S. children and under-qualified workers
 - Health care
 - Affordable housing for young or older, less-affluent U.S. residents
 - The U.S. environment (by efficiently using national resources)
 - International cultural understanding, or the worker must be requested by a U.S. governmental agency
- ▶ Must meet at least three specific criteria to be eligible, such as documented proof of professional certification or a letter displaying 10 years of work experience in the field.

EXAMPLE: FAVORABLE IMPACT

A childhood obesity specialist conducting groundbreaking research that will drive the development of cultural changes and positively impact the United States.

KEY HR TAKEAWAYS

- ! While the EB-2 case is more difficult to document and substantiate than the others, successful applicants often move faster through the process than those in other categories, since fewer qualified candidates exist.
- ! When describing the job, as part of the labor certification process, employers must clearly articulate the minimum requirements for the position as holding a master's or bachelor's degree, plus five years of progressive experience.

QUALIFYING QUESTIONS

Does the employee hold an advanced degree?

YES

NO

Does the employee have exceptional ability in the sciences, arts or in business?

YES

NO

Does the employee's field of expertise benefit the national interest of the United States?

YES

NO

If the employee does not have an advanced degree, does he or she have an undergraduate degree and at least five years of progressive work experience?

YES

NO

Does the role meet necessary requirements to begin the labor certification (PERM) process?

YES

NO

If you answered **YES** to any of these questions, the EB-2 green card may be a permanent residency option for your employee. To confirm eligibility for your foreign national, contact VISANOW at **(855) 840-8046** or visit **[VISANOW.com/contact-us](https://www.visanow.com/contact-us)**.

03

EB-3: SKILLED OR OTHER WORKERS



The EB-3 is the most frequently applied-for employment-based green card option, and casts the widest net in terms of who qualifies. As a result, it has the largest processing backlog. It's open to:

- 1 Professionals
- 2 Skilled workers
- 3 Other or unskilled workers

Qualified applicants and their employers must have an approved labor certification before beginning the petition process. For more information on the labor certification (PERM) process, please see **page 16**.

WHO QUALIFIES?



PROFESSIONALS

with a bachelor's degree (or foreign equivalent) that will fill a role requiring a college degree. Examples include **teachers, architects and engineers.**

SKILLED WORKERS

with at least **two years of training** or work experience, who may or may not hold a college degree.



OTHER OR UNSKILLED WORKERS

who will be filling a job that requires less than two years of training or experience. Examples include **nannies, housekeepers, groundskeepers and nurse's aides.**



KEY HR TAKEAWAYS

- ! The EB-3 category is the most common green card classification and has the highest demand. As a result, there is a lengthy average approval waiting period of six to nine years. It can be even longer due to per-country allotments.

QUALIFYING QUESTIONS

Is the employee a skilled worker, professional or other/unskilled worker, based on necessary qualifying criteria?

YES

NO

Does the open job meet necessary requirements to begin the labor certification (PERM) process?

YES

NO

If you answered **YES** to any of these questions, the EB-3 green card may be a permanent residency option for your employee. To confirm eligibility for your foreign national, contact VISANOW at **(855) 840-8046** or visit us at www.VISANOW.com/contact-us/.

04

LABOR CERTIFICATION: THE “PERM” PROCESS



The PERM labor certification process protects skilled U.S. workers from displacement by less-skilled foreign workers. Companies must prove they took reasonable measures to fill an open position with a U.S.-based worker.

This multi-step process typically takes 10 to 12 months and is required for both EB-2 and EB-3 green cards. PERM certification must be completed prior to filing for a green card, so it's recommended that HR professionals thoroughly understand what's involved to avoid delays.

The PERM process contains a variety of steps, but can be split into two stages:

- 1 **Recruitment**
- 2 **Filing**

2
YEARS

Two years after an employee’s start date is when VISANOW recommends HR professionals begin considering workers for green card sponsorship. Holding off longer than two years puts employees at risk of reaching their max-out dates and having to leave the United States before they obtain their green card – which would leave employers with a labor gap in a hard-to-fill position.

RECRUITMENT

STEP 1 - PREVAILING WAGE DETERMINATION:

Immigration law requires employers to pay foreign workers at least the prevailing wage once the foreign national receives his or her green card. To determine the prevailing wage, the employer’s existing job description must be sent to the **Department of Labor’s website**. A DOL inspector will analyze the duties, skills and requirements associated with the job, and respond with its determination as to the appropriate salary for the specified work and location.

JOB DESCRIPTION TIPS

- Avoid industry jargon
- Focus on one role instead of multiple interdepartmental responsibilities

If the job description is unclear, the DOL inspector may request additional information, causing delays. If the job description is too technical, the inspector may issue the highest wage determination, requiring the employer to increase the salary or rewrite the job description.

HELPFUL FACTS:

- ! Generally, the DOL’s prevailing wage determination will be issued within two months.
- ! The employer may submit a wage survey to the DOL as part of its request for prevailing wage determination. The survey must be reviewed by attorneys, to ensure it meets the DOL’s strict criteria for currentness and regional specificity.
- ! Prevailing wage determinations are subject to DOL expiration dates.

STEP TWO - RECRUITMENT:

The job recruitment aspects of the PERM process must be completed perfectly, to help shape the case for why a foreign worker is needed.



Completing the advertising stage quickly is critical, as none of the advertisements can be older than 180 days at the time of filing the labor certification.

There are several recruitment advertisements that must be placed by the employer:

- **One job order placed with a state workforce agency**
- **Two Sunday advertisements in a newspaper of general circulation in the area of intended employment**
- **One internal posting notice**
- **Three additional advertisements from a predetermined list of options**

Each of these advertisements requires special details, which are outlined below:

PLACING A JOB ORDER WITH A STATE WORKFORCE AGENCY

- ▶ The job order must be placed in the state of intended employment and run for 30 consecutive calendar days.
- ▶ While most job orders are placed via an online portal through the state’s workforce agency, posting methods vary, so familiarize yourself with your state’s requirements.
- ▶ The next steps cannot be completed without proper documentation and proof of this particular job advertisement.

Good news! All 50 states offer some form of online posting method for job orders. VISANOW recommends printing and retaining proof that the job order ran as required for at least five years after the PERM process concludes, because the DOL could request it.

DEFINITION: JOB ORDER

A job order announces the availability of an open position to registered, unemployed workers, in the state where the work is to be done.

SUNDAY NEWSPAPER ADVERTISEMENTS

- ▶ Two separate ads must be placed in a Sunday edition of a local newspaper. The ads may run in consecutive weeks as long as they’re documented.
- ▶ Each ad must include:
 - Name of the employer
 - Method in which applicants should submit resumes
 - A description of the job that includes its basic duties
 - Job location and travel requirements

INTERNAL POSTING NOTICE

- ▶ Employers are required to alert their current employees they are filing for labor certification and actively recruiting to fill the particular role.
- ▶ Announcement of the posting must be communicated across all normally used recruitment channels.
- ▶ The notice must be physically posted for at least 10 consecutive business days and contain the job title, duties and requirements.
 - It must also contain specific language as mandated by the DOL.
Because the PERM process is so complicated, it’s recommended that you work with VISANOW or an experienced attorney. A legal professional can ensure that the specific language as mandated by the DOL is included in the post.
- ▶ Internal responses to the posting should be documented, along with all additional applications and/or resumes received.

Hold onto these responses for at least five years. You may need them down the line should the DOL request them.



Known as the **cooling-off period**, once all job postings are completed, employers must wait at least 30 days before moving to the next step in the PERM process. This gives the U.S. job market time to respond to any advertisements and potentially be interviewed by the employer.

Because of this 30-day period, VISANOW recommends the internal notice and job order be placed concurrently so recruitment activities conclude well in advance of the 180-day time limit.

THREE ADDITIONAL JOB ADVERTISEMENTS

- ▶ Employers must choose three additional advertising options to complete the recruitment stage of the PERM process. The most common options chosen for these advertisements are:
 - Placing the ad on the company’s website
 - Placing the ad with a job-search site (e.g., LinkedIn, Monster, CareerBuilder, etc.)
 - Employee referral programs

To simplify the process, it’s acceptable to reuse the language in the ad previously placed in the Sunday newspapers.

No time requirement exists for the posting of these additional job ads. However, recommended runtime is at least 10 consecutive calendar days to avoid any issues in processing.

It is also important to:

- ▶ Be meticulous about documenting ALL resumes and applications received and retain proof of all advertisements placed for at least five years.
- ▶ Keep a report that details all steps taken throughout the recruitment process to assist in case of DOL audits.



of PERM filings are audited.

Safeguard against PERM issues by contacting VISANOW for information on how our proprietary and specialized PERM process can help organize, manage and monitor all aspects of the certification process. Call us at **(855) 840-8046** or visit us at **www.visanow.com/contact-us/**.

FILING THE PERM APPLICATION

Once all steps in the recruitment stage have been completed, the PERM application is ready for filing by submitting the Permanent Employment Certification form, **ETA 9089**, via the DOL website.

THE ETA 9089 INCLUDES:

- Standard information about the job duties, requirements, location, prevailing wage, etc.
 - The employer’s recruitment process details and all necessary documentation of its completion per PERM guidelines.
 - Supporting information regarding the foreign national as the leading candidate to fill the role.
-
- ▶ Current processing time is typically four to six months.
 - ▶ Following submission of the ETA 9089, the PERM application will be approved, audited or denied.

05

GREEN CARD APPLICATION

Following the approval of the PERM application, the employer can file a green card application via:

- 1 **I-140: the Immigrant Petition for Alien Worker form**
- 2 **I-485: the Application to Register Permanent Residence or Adjust Status**



I-140

The I-140 application requires information about the foreign worker, employer and job description. Current processing time is approximately four to six months. An approved I-140 petition for EB-2 and EB-3 green card applications doesn't instantly result in a green card. For example, workers born in China, India, Mexico and the Philippines are assigned a "priority date," which is a reserved spot in a queue for a green card. The length of these queues will vary by the worker's country of origin and the green card category.

PRIORITY DATE

The priority date is when the relevant PERM application (Form ETA 9089) was filed with the DOL.

REMEMBER: The I-140 can only be filed once the ETA 9089 permanent employment certification application is approved, unless the worker is filing under preference category EB-1 or qualifies for the National Interest Waiver.

I-140 DOCUMENT CHECKLIST:

HR DOCUMENTS

- Original version of the signed and approved PERM certification documents
- Proof of the employer's ability to pay the foreign national, such as financial statements and annual reports
- Company marketing and promotional materials

EMPLOYEE DOCUMENTS

- Copies of the foreign national's educational degree(s) and certifications
- Experience letters
- All current and previous immigration documents
- W-2 wage and tax statements
- Copy of passport
- Copies of the foreign national's current visa and immigration documents

The I-140 is the only stage of the green card process that **can be filed with premium processing**, shortening the waiting period to only 15 days compared to a four to five month wait.



- ! **Following its approval, the I-140 petition can be used to apply for extensions of H-1B status for up to three years at a time, even after maxing out.** This is important, as this acts as a bridge between the expiration of an H-1B visa and receiving a green card, which can take years. For updates on processing times and priority dates, check the monthly Visa Bulletin (see page 26) or visit VISANOW.com for more information.

I-485

The last step in the green card application process is filing form I-485 to adjust lawful immigration status for the foreign national.

- ▶ Approval of the I-485 typically takes four to 10 months once USCIS begins processing the I-485 application.

I-485 DOCUMENT CHECKLIST:

HR DOCUMENTS

- Employment verification letter

EMPLOYEE DOCUMENTS

- Completed medical exam
- Birth certificate
- Marriage certificate (if applicable)
- Two identical passport-style photos
- I-94 arrival or departure form
- All previous I-797 approval forms
- Tax returns
- Divorce decree (if applicable)
- Military record (if applicable)
- Arrest record or criminal record (if applicable)
- Passport
- Current pay stubs

06

THE VISA BULLETIN

USCIS receives a massive volume of employment-based green card applications every year, creating a significant backlog. As a result, the U.S. Department of State issues the monthly Visa Bulletin, which provides updates regarding dates for filing applications and application final action dates.



Here's how to decipher the Visa Bulletin tables:

C = CURRENT

This means there is no backlog for the particular category.

U = UNAUTHORIZED

This means no green cards can be issued for that category.

LISTED DATE = FILING APPLICATION DATE/APPLICATION FINAL ACTION DATE

Each employment-based green card category has two Visa Bulletin dates, the Filing Application Date and the Application Final Action Date.

The Final Action Date table reflects the priority dates in which USCIS is adjudicating I-485 cases, while the other Filing Application Date table reflects the priority dates to which a person can file his or her I-485 case. For example, the India EB-2 priority dates are July 1, 2011 and May 1, 2005. If you have a priority date of July 1, 2011 or earlier, you can submit your I-485 case. However, USCIS will not approve your I-485 unless you have a priority date of May 1, 2005 or earlier.

**For monthly Visa Bulletin updates, subscribe to the VISANOW blog at
www.VISANOW.com/immigration-blog/.**



VISANOW.COM

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