



DISCLAIMER

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H1B VISA

The H1B Visa in the U.S. is a non-immigrant work visa. The visa allows companies to hire employees who have graduated from university to fill specialized positions.

- The applicant must be a well-qualified person who has been offered a job in the United States for a term of three years or less at the outset. If the visa is granted, it can be extended for a further three years if the employer still requires the visa holder’s services at that stage.
- They are typically issued for a maximum of six years in two three-year allotments, provided the extension is because the employer still requires the visa holder’s services,

An individual may qualify for an H1B Visa if they work in the occupational areas such as: sciences, mathematics, information technology, engineering, architecture, medicine, business, accounting, theology the law, and other specialized fields.

- Individuals cannot apply for the classification, but must have an employer nominate them.
- H1-B visas are working visas and are limited specifically to the sponsoring employer. The visa holder cannot change jobs or move elsewhere without also changing their visa.

The government places an annual cap on them. Under the current cap, 85,000 new H1B visas are made available. Among those, 65,000 are for those with a Bachelor’s and 20,000 are for those with advanced degrees.

The H1B Visa process is quicker than the Green Card method, making it the popular choice for employers looking to bring in long-term foreign employees.

- Some H1-B holders are only allowed a certain number of trips in and out of the U.S. during the period that the H1-B visa is valid.

GREEN CARD

A Green Card is an employment-based immigration visa. The card allows migrants to become permanent U.S. residents through a couple of methods:

- First, if you have a family member already in the States, you can apply for permanent residence.
- The second, and more common method, is to petition for the green card through employment.

⇒ Green cards expire, and they must be renewed. The modern edition of the green card expires after 10 years.

A U.S. employer may also petition for permanent residence for an employee by filing Form I-140. Obtaining an employment-based green card is a longer and more intense process than obtaining an H-1B visa.

- However, obtaining a green card is ultimately more rewarding for the employer and the individual as it allows the holder and any dependent family members to live permanently in the United States.

The process requires the petitioning U.S. employer to submit a permanent labor certification request with the Department of Labor. This process is known as the PERM process and is much more intensive than the Labor Condition Application process for H-1Bs, including providing evidence, that there is a lack of availability of U.S. citizens or permanent resident workers for the proposed position.

- As part of the process, the employer must advertise the job through various means and maintain a detailed recruitment report, carefully documenting all contact with candidates who express interest in the position.

⇒ If the employee is already in the U.S. on an H-1B visa, the petitioning employer does not necessarily need to be the same employer as the H-1B employer. It can be another employer who wishes to employ that person after they obtain their green card.

Unfortunately, like H-1B visas, employment-based green cards are subject to quotas. There is a fixed quota of green cards issued every year which depends partly on the country and partly on the category of employment. Currently, the annual number of green cards issued is 140,000.

- There are annual caps on employment-based visa categories, resulting in significant waiting lists for applicants from certain countries.
- Countries such as India and China are subject to long backlogs due to the huge number of applicants that belong to these countries.

The U.S. government divides the work method of getting a Green Card into five categories:

1. EB1 (28.6% of quota)—Priority Workers. Priority workers are comprised of the following three sub-groups:
 - Foreign nationals with extraordinary ability in sciences, arts, education, business, or athletics
 - Foreign nationals that are outstanding professors or researchers with at least three years of experience in teaching or research and who are recognized internationally.
 - Foreign nationals that are managers and executives are subject to international transfer to the United States.
2. EB2 (28.6% of quota)—Professionals Holding Advanced Degrees or Persons of Exceptional Ability. Qualifying EB2 candidates must possess a Ph.D., master's degree, or five years of progressive post-baccalaureate experience *or* exceptional ability in the sciences, arts, or business.
3. EB3 (28.6% of quota)—Skilled Workers, Professionals, and Other Workers not classifiable as EB1 or EB2 workers.
4. EB4 (7.1% of quota) —Special Immigrants. This group includes certain religious workers, employees or previous employees of the U.S. government, and U.S. Armed Forces, translators.
5. EB5 (7.1% of quota)—Employment Creation. The EB5 categorization is for immigrant investors who make a substantial investment in a U.S. commercial enterprise which will create or preserve 10 permanent, full-time jobs for qualified U.S. workers.