

SELF-PETITIONING GREEN CARD APPLICATIONS

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Employment-Based (EB) Green Cards

- ▶ EB-1
 - ▶ EB-1A Alien of Extraordinary Ability (self-petition)
 - ▶ EB-1B Outstanding Professor/Researcher
 - ▶ EB-1C Multinational Executive/Manager
- ▶ EB-2
 - ▶ National Interest Waiver (NIW) (self-petition)
 - ▶ PERM Labor Certification applications, including Schedule A, Special Handling for University/College Teachers
- ▶ EB-3 – PERM applications
- ▶ EB-4 – Religious Workers
- ▶ EB-5 – Investment-based (used to be \$1 million)

EB-1A Extraordinary Ability

- Demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise
- “Extraordinary” defined as: *a level of expertise indicating that person is one of the small percentage who have risen to the very top of the field of endeavor*
- One-time achievement (major, international recognized award) or at least 3 out of 10 criteria

Criteria: Extraordinary Ability

- Lesser national or international prizes or awards
- Membership in associations requiring outstanding achievements
- Published materials or mainstream media written about the alien
- Participation, individually or on a panel, as the judge of the work of others
- Alien's original scientific, scholarly, artistic, athletic or business-related contributions of **major significance**
- Authorship of scholarly articles in professional or major trade publications or other media
- Leading or critical role for distinguished organizations or establishments
- High compensation/salary

*** Comparable evidence may also be used if the standards do not readily apply to the individual's occupation

Useful Evidence

- ▶ Should be national or international (not local/regional unless it's prestigious R1 institution)
- ▶ **Publication of scholarly books and articles**
 - ▶ How many is enough?
 - ▶ Does it matter if you are first-author?
 - ▶ Does it matter if there are hundreds of other authors?
 - ▶ Does it matter where you publish?
- ▶ **Citation record** – shows influence in the field- how much is enough?
- ▶ **Reference or Testimonial Letters**
 - ▶ How many do you need?
 - ▶ Does it matter who/where the letter is from?
 - ▶ Usefulness of letters being questioned by USCIS
 - ▶ Credibility - independent opinion/bias
 - ▶ Original contributions of major significance?

Useful Evidence

- ▶ Participation, individually or on a panel, as the judge of the work of others (**peer review activity** – journals, conferences, grants, panels, Ph.D. committee)
 - ▶ Must complete, not just invited to do it
- ▶ **Conference presentations**
 - ▶ Oral presentations given more weight than posters
- ▶ National **grants or funding**
- ▶ Playing a critical or leading role for distinguished organizations
- ▶ **Awards** – careful of single locality
 - ▶ Do student/post-doc awards/fellowships/travel grants count?
 - ▶ R-1 institutions
- ▶ **Patents** – pending vs approved vs licensed and in use
- ▶ **Media coverage**
- ▶ **Membership** in organizations – must be exclusive
- ▶ Entrepreneurs
 - ▶ Job creation if at start-up
 - ▶ VC/angel funding
 - ▶ Stock options can be used to argue high compensation

EB-2 National Interest Waiver

- ▶ Member of Profession – BA degree is minimum requirement for entry into the occupation (not enough to have advanced degree or BA plus 5 years of experience)(NEW)
- ▶ Criteria (3 part test: *Matter of Dhanasar*) – must meet all 3
 - ▶ Applicant's proposed endeavor has both substantial merit and national importance;
 - ▶ Science, business, technology, culture, health, education, entrepreneurialism
 - ▶ Test is “national importance” not “national in scope”
 - ▶ Applicant is well positioned to advance the proposed endeavor;
 - ▶ Education/skills/knowledge/record of success/model or plan for future activities/progress towards the endeavor/interest of potential customers/investors/users
 - ▶ Must show direct relationship between qualifications and proposed endeavor (NEW)
 - ▶ On balance, it would be beneficial to the U.S. to waive the requirements of a job offer and labor certification

Tips to Build an EB-1A or NIW

- ▶ Evidence for NIW and EB-1 similar
- ▶ Publish or perish – international peer-reviewed journals
- ▶ Speak at national or international conferences
- ▶ Engage in peer-review activity for journals, conference committees, scientific boards
 - ▶ Serve as a judge!
- ▶ Mainstream media coverage – do it!
- ▶ Entrepreneurs – job creation/patents/company success

EB-1A vs EB-2 NIW Process

EB-1A

- ▶ Step 1: I-140 Immigrant Visa Petition
 - ▶ Premium processing (15 business days)
- ▶ Step 2: I-485 Adjustment of Status (AOS) or Immigrant Visa Process (IVP)
 - ▶ Spouse/minor kids file I-485 at same time
 - ▶ Is there a foreign national significant other?
 - ▶ Must marry before principal applicant's I-485 is approved
 - ▶ File I-485 concurrently or separately (priority date must be current to file)
 - ▶ EB-1 usually current (except for Indians/Chinese)

EB-2 NIW

- ▶ Step 1: I-140 Immigrant Visa Petition
 - ▶ Premium processing (45 business days)
- ▶ Step 2: I-485 Adjustment of Status (AOS) or Immigrant Visa Process (IVP)
 - ▶ Spouse/minor kids file I-485 at same time
 - ▶ Is there a foreign national significant other?
 - ▶ Must marry before principal applicant's I-485 is approved
 - ▶ File I-485 concurrently or separately (priority date must be current to file)
 - ▶ Backlogs for worldwide for past 2 years – 2 to 3.5 years to get green card (except for Indians/Chinese)
 - ▶ NIW petitions nearly doubled between 2021 and 2023
 - ▶ 21,990 to 39,810 petitions

Visa Bulletin

- ▶ Released by Department of State (DOS) every month
- ▶ Priority Date (PD) = date of filing of I-140 Immigrant Visa petition
- ▶ If retrogressed/backlogged– can't file I-485 AOS until PD is current
- ▶ Two charts in Visa Bulletin
 - ▶ Final Action Dates (when immigrant visa/green card can be approved)
 - ▶ Dates for Filing (when I-485 adjustment of status can be filed)
 - ▶ Once DOS releases Visa Bulletin, USCIS announces which chart to use for that month

Final Action Dates – March 2026

(Date immigrant visa/green card can be approved)

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01 MAR 2023	01 MAR 2023	C	C
2nd (NIW)	15 OCT 2024	01 SEP 2021	15 SEP 2013	15 OCT 2024	15 OCT 2024
3rd	01 OCT 2023	01 MAY 2021	15 NOV 2013	01 OCT 2023	01 AUG 2023

Dates for Filing – March 2026

(Date I-485 application can be filed)

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01 DEC 2023	01 DEC 2023	C	C
2 nd (NIW)	C	01 JAN 22	01 NOV 2014	C	C
3rd	15 JAN 2024	01 JAN 2022	15 AUG 2014	15 JAN 2024	01 JAN 2024

Impact of Retrogression

- ▶ Cannot file I-485 AOS until priority date is current
- ▶ Trends? Likely to see forward movement this year
- ▶ If on H-1B, can extend beyond 6 years
 - ▶ 3-year increments
- ▶ Spouses can apply for H-4 EAD if H-1B has an approved I-140 petition

New-ish USCIS Filing Fees

- ▶ I-140 filing fees
 - ▶ Premium processing (optional): \$2,965
 - ▶ Regular filing fees – new tiered system
 - ▶ Small employers/**self-petition**: \$1,015
 - ▶ Employers with 26 or more F/T employees: \$1,315
 - ▶ Non-profits: \$715
- ▶ I-485 filing fees
 - ▶ No premium processing
 - ▶ No longer includes combo card – separate fee for EAD (\$260) and Advance Parole (AP)(\$630) travel document
 - ▶ Including EAD and AP: \$2,330; kids under 14: \$1,840
 - ▶ Without EAD and AP: \$1,440; kids under 14: \$950

Common Green Card Issues

- ▶ Challenges? Trends? **Unpredictability – luck of the draw**
 - ▶ NIW much easier than EB-1A
 - ▶ Filing multiple cases? EB-1A and NIW?
 - ▶ Visa retrogression impacts strategy
- ▶ When to start Green Card process 😊 Anytime!
 - ▶ O-1A – automatic green card?
 - ▶ H-1B: What is latest you should start?
 - ▶ 4.5 years into H-1B
- ▶ Immigrant Intent
 - ▶ **Can you apply for green card if on J-1 or F-1 or TN or E-3 or H-1B1 (Chile/Singapore)? YES!!!!**
- ▶ Travel while I-485 AOS pending – no international travel unless you have:
 - ▶ Advance Parole travel document/combo card
 - ▶ H-1B and L-1 visa (H-4/L-2 for dependents)

TRUMP 2.0: State of the Union

- ▶ March/April 2025 – “catch and revoke” policy - **visa revocations**
 - ▶ Starting to see revocations again
- ▶ March 2025– present – changes at US embassies and consulates
 - ▶ Extreme vetting of social media for F-1s and J-1s at US embassy/consulate
 - ▶ Social media must be made public before interview
 - ▶ Interview waiver policy rescinded – mandatory interviews for nearly everyone
 - ▶ Mail-in/dropbox no longer allowed
 - ▶ **Must apply for visa in home country or country of residence**
- ▶ June 2025 and December 2025
 - ▶ Travel bans for 19 countries (June); in December, expanded to 38 countries (partial and full bans)
 - ▶ Immigration raids
- ▶ August 2025 - proposed changes impacting F-1/J-1 – **may be released in March 2026**
 - ▶ Would end D/S (duration of stay) to fixed date
 - ▶ Grace period reduced to 30 days from 60 days
 - ▶ Prohibits enrolling in program at the same or lower level

TRUMP 2.0: State of the Union

- ▶ September 2025– H-1B chaos
 - ▶ H-1B \$100,000 fee – Executive Order – effective 9/21
 - ▶ Litigation may stop it from being implemented?
- ▶ Trump Gold Card
 - ▶ \$1 million gift from individual (gold)
 - ▶ \$2 million gift from company on behalf of individual (corporate gold)
 - ▶ Not green card - \$5 million donation to spend 270 days per year without US taxation on foreign income (platinum card)
- ▶ December 2025 – Indian H-1Bs subject to extreme vetting – getting appointment in India difficult
- ▶ December 29, 2025 – weighted lottery selection final rule
 - ▶ Changes to prevailing wages -coming

TRUMP 2.0: 2026

- ▶ January 2026
 - ▶ **75 Country** pause on all immigrant visa issuance at US embassies and consulates abroad
 - ▶ Does not impact green card applications in the United States (i.e. I-485 adjustment of status applications)
 - ▶ Does not include dual nationals
 - ▶ Pause on all adjudications for **Travel Ban** countries until comprehensive review completed
 - ▶ Impacts all applications, including OPT, STEM OPT, H-1B, and green card applications
 - ▶ Includes Iran, Venezuela, Afghanistan, Nigeria, etc.
 - ▶ May include dual citizens
 - ▶ If F-1 from a Travel Ban country, stay on F-1

Use Your Resources

- ▶ Be careful who you listen to!
- ▶ Be careful what you find online!
- ▶ Check in with International Office
- ▶ Use existing relationship with Loke Walsh Immigration and others
 - ▶ Send your academic-style CV for assessment
 - ▶ No charge for consultations

Q & A

For follow-up questions:

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