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Adjustment of Status to Green Card

The Three Steps to Obtain An Employment Based Green Card (EB-2, EB-3)

There are three main steps to obtain an employment-based green card:

1. PERM Labor Certification (Assessment of whether or not there are qualified U.S. workers)
2. I-140 petition (employer petition for permanent foreign worker)
3. I-485 application (employee application for permanent residence (green card application)). This step may include an application for advance parole (ability to leave the country) and employment authorization (ability to work while waiting) filings.

The steps are further described below.

1. **PERM Labor Certification**

PERM is the procedure for applying for labor certification. As a first step, the employer is required to show that it could not find a ready, willing and able U.S. worker for the position. This step involves working closely with your HR department and legal counsel to post advertisements per the Department of Labor's regulations. Generally speaking, the recruitment process lasts about 6 - 8 weeks and during the recruitment process, the company should collect and review all applications received for the position and make a good faith attempt to evaluate the applicants. The more specialized the foreign national is, the more of a chance that this condition will be satisfied as less applicants will be qualified.

If the employer is unable to find a ready, willing and able US worker for the position, the company can file a PERM labor certification online with the Department of Labor. The labor certification process is a very complicated one and the Department of Labor has very stringent requirements and the approval is dependent on whether or not there is an audit.

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Usually, most PERM cases take around 3-10 months from the start to approval. The recruitment process, including designing the job description, obtaining a prevailing wage determination, interviewing applicants and completing the recruitment report, takes around 3 months. From that point, the DOL review and adjudication process takes around 3-7 months depending on the number of pending cases at its processing centers and whether or not your case is subject to an audit.

2. I-140 Petition

After the PERM labor certification is approved, the petitioning entity can file the second step of the application, the I-140 immigrant petition. This petition is filed directly with the United States Citizenship & Immigration Services (USCIS). The I-140 petition, show that the petitioning entity is offering a permanent position to a nonimmigrant employee; that the nonimmigrant employee met the minimum requirements of the position before coming to the company; and that the company has the financial ability to pay the offered salary. Once filed the petition usually takes about 2-6 months to be approved.

3. I-485 Application

The I-485 application (Adjustment of Status (AOS)) is the final step of the permanent residence process. An AOS is an application filed by someone who is physically in the United States who wants to adjust his or her non-immigrant status to immigrant status, i.e. adjust to a green card without having to return to their home country. Each applicant (eg. spouse, children) must file a separate application.

Adjustment of Status application can now be filed concurrently with an I-140, immigration petition (eg. EB-2 visa petitions) if visa numbers are available at the time of filing. (EB-2 visas are currently current for most countries). As processing is done concurrently with the I-140, it could be processed from between 2-9 months. Accordingly, if all goes well, after the PERM process has been completed, the entire green card process can all be completed in less than 6 months.

In addition, there are three major benefits to applying for an I-485: while an I-485 application is pending, an applicant may simultaneously apply for 1) Advance Parole; 2) Work Authorization; and 3) the alien can legally stay in the US and does not need to maintain their non-immigrant status.

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4. What are Employment Authorization and Advance Parole Applications?

The employment authorization document (EAD) and advance parole (AP) document are interim benefits available to adjustment of status applicants while their I-485 application is pending. While the I-485 remains pending, the EAD allows an I-485 applicant to work. The AP document enables an applicant to travel outside of the U.S. and return without a visa.

A holder of a dual intent visa (H-1B or L) may decide to file for and obtain employment authorization but may never use it to work. If an application is submitted for EAD, the applicant is still in valid H-1 or L-1 status and able to extend the H-1 or L-1 as needed (up to the maximum allowable time on that status). You should keep in mind that just because you obtain work authorization, it generally does not affect your status. One way it could impact your status is if you use the EAD to take on another job or use the EAD to work for the current employer if the H-1B status was about to expire. The other significant benefit of filing an I-485 is that a spouse or child may apply for EAD also and this approval usually takes around 90 days.

If you are considering sponsoring an employee for a green card, contact Scott Legal Services, P.C.. For more information on these and other immigration Visas click [here](#). You can also call us at 212-223-2964 or email us at iscott@legalservicesincorporated.com.

Also, click [here](#) for your free [White Paper](#) that summarizes the top 10 Immigration Questions and Answers.