

# GREEN CARD THROUGH EMPLOYMENT

## DISCLAIMER

The following advice is provided by **Doland & Fraade** for informational purposes only and is intended to be used as a guide prior to consultation with an attorney familiar with your specific legal situation. This is not a substitute for the advice of an attorney.

An immigrant is a foreign national who has been authorized to live and work permanently in the United States. If you want to become an immigrant based on the fact that you have a permanent employment opportunity in the United States, or if you are an employer that wants to sponsor someone for lawful permanent residency based on permanent employment in the United States, you must go through a multi-step process.

**First**, foreign nationals and employers must determine if the foreign national is eligible for lawful permanent residency under one of USCIS' paths to lawful permanent residency.

**Second**, most employment categories require that the U.S. employer complete a labor certification request for the applicant, and submit it to the Department of Labor's Employment and Training Administration. Labor must either grant or deny the certification request. Qualified alien physicians who will practice medicine in an area of the United States which has been certified as underserved by the U.S. Department of Health and Human Services are relieved from this requirement.

**Third**, USCIS must approve an immigrant visa petition, Form I-140, Petition for Alien Worker, for the person wishing to immigrate to the United States. The employer wishing to bring the applicant to the United States to work permanently files this petition. However, if a Department of Labor certification is needed the application can only be filed after the certification is granted. The employer acts as the sponsor (or petitioner) for the applicant (or beneficiary) who wants to live and work on a permanent basis in the United States.

**Fourth**, the State Department must give the applicant an immigrant visa number, even if the applicant is already in the United States. When the applicant receives an immigrant visa number, it means that an immigrant visa has been assigned to the applicant.

**Fifth**, if the applicant is already in the United States, he or she must apply to adjust to permanent resident status after a visa number become available. If the applicant is outside the United States when an immigrant visa number becomes available, he or she will be notified and must complete the process at his or her local U.S. consulate office.

## **Who is Eligible for Employment Based Immigration?**

There are five categories for granting permanent residence to foreign nationals based on employment skills.

**First Preference (EB-1 priority workers):** aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers.

**Second Preference (EB-2 workers with advanced degrees or exceptional ability):** aliens who are members of the professions holding advanced degrees or their equivalent and aliens who because of their exceptional ability in the sciences, arts, or business will substantially benefit the national economy, cultural, or educational interests or welfare of the United States.

**Third Preference (EB-3 professionals, skilled workers, and other workers):** aliens with at least two years of experience as skilled workers, professionals with a baccalaureate degree, and others with less than two years experience, such as an unskilled worker who can perform labor for which qualified workers are not available in the United States.

**Fourth Preference (EB-4 special workers such as those in a religious occupation or vocation):** aliens who, for at least two years before applying for admission to the United States, have been a member of a religious denomination that has a non-profit religious organization in the United States, and who will be working in a religious vocation or occupation at the request of the religious organization. For EB-4 special workers (those in a religious occupation or vocation), you or your employer must file USCIS Form I-360 (Petition for Amerasian, Widow(er), or Special immigrant) at the USCIS Regional Service Center that serves the area where you will work.

**Fifth Preference (EB-5 Employment Creation):** aliens who will be granted immigrant status in the United States for the purpose of engaging in a new commercial enterprise.

## **How Do I File a Petition for Alien Worker?**

A USCIS Form I-140 (Petition for Alien Worker) must be filed at the USCIS Regional Service Center that serves the area where you will work. Detailed information is provided in the instructions for Form I-140. Filing requirements differ for each category.