

Helping a Foreign National Employee Get Permanent Resident Status

OVERVIEW

As an employer, if you want to help an employee become a permanent resident, you and the employee would go through a multi-stage process.

That process starts, in most cases, by the employer first obtaining an approved Labor Certification Request from the U.S. Department of Labor (DOL), before filing an employment petition with USCIS on behalf of the employee – placing the employee in line to immigrate. For most immigrant visas, after the Labor Certification Request has been approved by the DOL, or if such a request is not required, the employer continues the process by filing **Form I-140, *Immigrant Petition for Alien Worker*** with USCIS. Form I-140 is available on our website at www.uscis.gov. Sometimes the employee may be able to file an application for permanent resident status (Form I-485) concurrently with the employer's Form I-140. For information on all the filing requirements and fees for a request for labor certification with DOL, please visit the agency's website at www.dol.gov.

In the case of the EB-4 immigrant category, for certain religious workers, the employer or the worker would file a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and not the Form I-140.

Note: In certain circumstances, an EB-1 worker of extraordinary ability and an EB-4 religious worker may petition for himself or herself.

There are four basic employment-based, “visa preference categories.”

- [EB-1 - Extraordinary Ability, Professors, Researchers, or Executives](#)
- [EB-2 - Exceptional Ability in the Sciences, Arts, or Business](#)
- [EB-3 - Skilled Worker, Professional, or Unskilled Worker](#)
- [EB-4 - Immigrant Religious Worker](#)

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Who are the employees that I may file for?

A U.S. employer may apply on behalf of a prospective or current employee who is a foreign national inside or outside the United States who may qualify under one or more of the employment-based or “EB” immigrant visa categories. The EB visa categories are divided into four preference categories. These categories are organized by occupational priorities as mandated by Congress.

Note: In certain circumstances, an EB-1 worker of extraordinary ability and an EB-4 religious worker may petition for himself or herself.

In the chart below, choose the occupation that most closely describes the occupation of the employee you want to help become a permanent resident.

EB-1 Priority Workers	EB-2 Professionals with Advanced Degrees or Persons with Exceptional Ability	EB-3 Professional or Skilled Workers	EB-4 Certain Religious Workers
<p>Extraordinary ability in the sciences, arts, education, business or athletics</p> <p>FAQs and information about this category</p>	<p>Employees 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 U.S.</p> <p>FAQs and information about this category</p>	<p>Professionals with a baccalaureate degree.</p> <p>FAQs and information about this category</p>	<p>Certain Religious workers.</p> <p>FAQs and information about this category</p>
<p>Outstanding professors and researchers</p> <p>FAQs and information about this category</p>	<p>Members of the professions holding advanced degrees or their equivalent.</p> <p>FAQs and information about this category</p>	<p>Employees with at least two years experience as skilled workers.</p> <p>FAQs and information about this category</p>	<div style="background-color: black; width: 100%; height: 100%;"></div>
<p>Multinational executives and managers</p> <p>FAQs and information about this category</p>	<div style="background-color: black; width: 100%; height: 100%;"></div>	<p>Other workers with less than two years experience, such as an unskilled worker who can perform labor for which qualified U.S. workers are not available</p> <p>FAQs and information about this category</p>	

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The employee is currently:

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- [Outside the U.S.](#)

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How did the employee enter the United States?

- [Legally](#)
- [Illegally](#)

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To your knowledge, is this employee currently in a legal nonimmigrant status in the United States?

- [Yes](#)
- [No](#)

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This employee is currently in the U.S. in what nonimmigrant category? (Choose one below)

Nonimmigrant Categories			
Diplomats and Government Representatives, and their staffs and	Nonimmigrant Workers and their dependents		
A	Diplomatic Personnel	D	Crewmembers
C2	Representative in transit to or from the United Nations Headquarters District	E	Treaty Traders and Treaty Investors based on a bilateral treaty, and dependents
C3	Government Representatives in transit through the U.S.	H1B	Temporary Workers in Specialty Occupations
G	Other Government Representatives	H1C	Registered Nurses
NATO	NATO personnel on assignment to the U.S.	H2A	Temporary Agricultural Workers
Tourists and Visitors on business		H2B	Temporary skilled and unskilled workers
B	Tourists and Visitors on Business including citizens of Canada entering without a visa	H3	Trainees
WB	Visitors coming temporarily on business admitted under the Visa Waiver Program	H4	Dependents of H1, H2, and H3 workers and trainees
WT	Tourists admitted under the Visa Waiver program	I	Representatives of Foreign Information Media
Guam Visa Waiver	Tourists Admitted only to Guam under Special Visa Waiver	L	Intra-Company Transferees
Students and Exchange Visitors, and their dependents		O	Persons with Extraordinary Ability and their support personnel
F	Academic Students	P1	Internationally recognized Athletes and Entertainers
J	Exchange Program Visitors	P2	Artists and Entertainers pursuant to Exchange Agreements
M	Vocational Students	P3	Culturally Unique Artists and Entertainers
Fiancé(e)s and certain relatives of U.S. citizens and Permanent Residents		P4	Dependents of 'P' athletes, artists and entertainers
K1 K2	Fiancé(e)s of U.S. citizens and their dependent children (also see U.S. citizen services)	Q1	International Cultural Exchange Visitors
K3 K4	Certain Husbands and Wives of U.S. citizens, and their dependent children	Q2, Q3	Irish Peace Process cultural training program participants
V	Certain Relatives of a Permanent Resident (LIFE Act)	R	Religious Workers
Others		TN1, TD	Canadian professionals under NAFTA (North American Free Trade Agreement)
C1, TWOV	Persons transiting the U.S.	TN2, TD	Mexican professionals under NAFTA (North American Free Trade Agreement)
S U	Certain Informants and victims of criminal activity in the U.S.		
T	Victims of Trafficking		
Parolee	Person paroled into U.S. temporarily		

To your knowledge, since January 1, 1977, has this employee been employed in the United States without proper authorization?

- [Yes](#)
- [No](#)

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To your knowledge, has this employee ever violated his/her nonimmigrant status in the U.S.?

- [Yes](#)
- [No](#)

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Priority dates are numerical limitations (preference) assigned to eligible applicants seeking to immigrate to the United States. This is solely due to the maximum number of visas issued per fiscal year that are divided into family sponsored, employment based, and diversity immigration.

Note: the “fiscal year” is from October 1 through September 30.

Priority dates are used to make sure that each eligible person within an immigrant category is considered in chronological order. In other words, a priority date is the person’s place in line to immigrate. For employment-based categories, the priority date is either:

1. The date the I-140 is filed, if filing for an immigrant visa category that does not require a labor certification, or
2. The date the approved labor certification was received, at the Department of Labor, as indicated on the certification, if filing for an immigrant visa category that does require a labor certification.

Because your immigrant visa category is one of the employment-based categories, a waiting list has been established based on your priority date. To determine when a petition will be next in line for continued processing, the Department of State visa office has established priority cut-off dates. Once the priority date for a particular petition becomes current, the beneficiary (the employee) would then be able to pursue the immigrant visa process outside the United States or, if otherwise eligible, the adjustment of status to permanent resident process inside the United States.

[Check the State Department's visa availability bulletin.](#)

In the bulletin, if "C" is shown in a category, this means immigrant visas are immediately available for all qualified applicants in that category; and

In the bulletin, "U" means unavailable. This means no immigrant visas are available.

After reviewing the State Department visa bulletin, does it appear that an immigrant visa is currently available for this employee?

- [Yes](#)
- [No](#)

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In some cases, an employee who is in the United States may be able to file for permanent resident status at the same time the employer files the I-140 petition if an immigrant visa would be immediately available to him or her.

Priority dates are numerical limitations (preference) assigned to eligible applicants seeking to immigrate to the United States. This is solely due to the maximum number of visas issued per fiscal year that are divided into family sponsored, employment based, and diversity immigration.

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1. The date the I-140 is filed, if filing for an immigrant visa category that does not require a labor certification, or
2. The date the approved labor certification was received, at the Department of Labor, as indicated on the certification, if filing for an immigrant visa category that does require a labor certification.

Because your immigrant visa category is one of the employment-based categories, a waiting list has been established based on your priority date. To determine when a petition will be next in line for continued processing, the Department of State visa office has established priority cut-off dates. Once the priority date for a particular petition becomes current, the beneficiary (the employee) would then be able to pursue the immigrant visa process outside the United States or, if otherwise eligible, the adjustment of status to permanent resident process inside the United States.

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After reviewing the State Department visa bulletin, does it appear that an immigrant visa is currently available for this employee?

- [Yes](#)
- [No](#)

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It appears that you may want to pursue the [Form I-140](#) immigrant visa petition process for this employee. Under this visa category, you do not need a labor certification from the Department of Labor.

If the employee is outside the United States and if the petition you file on behalf of this employee is approved, it will be sent to the State Department's National Visa Center (NVC). The NVC will pre-process it and forward it to the U.S. Consulate nearest this employee's country of origin. The employee will be notified by the U.S. Consulate to continue processing for an immigrant visa.

Because an immigrant visa appears to be immediately available for this immigrant category, if the employee is in the United States and meets all other filing requirements, he/she may wish to consider filing a Form I-485, Application to Register Permanent Residence or Adjust Status, concurrently with Form I-140.

You can download the necessary forms from our website at www.uscis.gov.

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It appears that you may want to pursue the [Form I-140](#) immigrant visa petition process for this employee. Under this visa category, you do not need a labor certification and if the petition you filed on behalf of this employee is approved:

- He/she may remain in the U.S. in another legal status until such time as the immigrant visa does become available and apply for permanent residence at that time, or
- He/she must depart the U.S because He/she can not adjust his/her status to permanent resident in the United States, and
- The approval notice will be sent to the State Department's National Visa Center (NVC), and
- The NVC will pre-process it and forward it to the U.S. Consulate nearest this employee's country of origin, and
- The employee will be notified and may be invited to apply for his/her immigrant visa outside the United States at a U.S. Consulate when his/her visa becomes available

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Has this employee obtained a certification from the Department of State or NATO on Form I-566?

- [Yes](#)
- [No](#)

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If this employee was subject to the two-year foreign residence requirement (see his/her J-1 visa), has this employee obtained a waiver of the two-year foreign residence requirement through approval by USCIS on a Form I-612?

- [Yes](#)
- [No](#)

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It appears that you may want to pursue the [Form I-140](#) immigrant visa petition process for this employee. Under this visa category, you do not need a labor certification from the Department of Labor.

Unfortunately, because this employee:

- Did not enter the United States legally, or
- Entered in a status that is barred from applying for permanent resident status in the United States, or
- Worked in the U.S. without proper authorization some time after January 1, 1977, or
- Violated his/her status in the United States, or
- Is not currently in a valid nonimmigrant status, or
- Entered in A, G or NATO status and has not yet obtained a certification from the Department of State or NATO on Form I-566, or
- Entered in "J" status and has not yet obtained a waiver of the two-year foreign residence requirement, or
- Entered in K-1 fiance(e) status and did not seek permanent residence through marriage to the United States citizen petitioner,

He/she cannot file to adjust his/her status to permanent resident in the United States. He/she will need to depart the U.S. in order to apply for the immigrant visa at the U.S. Consulate.

If the petition you filed on behalf of this employee is approved:

- It will be sent to the State Department's National Visa Center (NVC).
- The NVC will pre-process it and forward it to the U.S. Consulate nearest this employee's country of origin.
- The employee will be notified and may be invited to apply for his/her immigrant visa outside the United States at a U.S. Consulate when his/her visa becomes available.

You can download the necessary forms from our website at www.uscis.gov.

Note: Visa processing times vary depending upon the visa category and country of origin of the employee. For more information about visa processing and availability, please visit the State Department's web site at www.state.gov.

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To your knowledge, is this employee currently in a legal nonimmigrant status in the United States?

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This employee is currently in the U.S. in what nonimmigrant category? (Choose one below)

Nonimmigrant Categories			
Diplomats and Government Representatives, and their staffs and		Nonimmigrant Workers and their dependents	
A	Diplomatic Personnel	D	Crewmembers
C2	Representative in transit to or from the United Nations Headquarters District	E	Treaty Traders and Treaty Investors based on a bilateral treaty, and dependents
C3	Government Representatives in transit through the U.S.	H1B	Temporary Workers in Specialty Occupations
G	Other Government Representatives	H1C	Registered Nurses
NATO	NATO personnel on assignment to the U.S.	H2A	Temporary Agricultural Workers
Tourists and Visitors on business		H2B	Temporary skilled and unskilled workers
B	Tourists and Visitors on Business including citizens of Canada entering without a visa	H3	Trainees
WB	Visitors coming temporarily on business admitted under the Visa Waiver Program	H4	Dependents of H1, H2, and H-3 workers and trainees
WT	Tourists admitted under the Visa Waiver program	I	Representatives of Foreign Information Media
Guam Visa Waiver	Tourists Admitted only to Guam under Special Visa Waiver	L	Intra-Company Transferees
Students and Exchange Visitors, and their dependents		O	Persons with Extraordinary Ability and their support personnel
F	Academic Students	P1	Internationally recognized Athletes and Entertainers
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Fiancé(e)s and certain relatives of U.S. citizens and Permanent Residents		P4	Dependents of 'P' athletes, artists and entertainers
K1 K2	Fiancé(e)s of U.S. citizens and their dependent children (also see U.S. citizen services)	Q1	International Cultural Exchange Visitors
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S U	Certain Informants and victims of criminal activity in the U.S.		
T	Victims of Trafficking		
Parolee	Person paroled into U.S. temporarily		

To your knowledge, since January 1, 1977, has this employee been employed in the United States without proper authorization?

- [Yes](#)
- [No](#)

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To your knowledge, has this employee ever violated his/her nonimmigrant status in the U.S.?

- [Yes](#)
- [No](#)

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Has this employee obtained a certification from the Department of State or NATO on Form I-566?

- [Yes](#)
- [No](#)

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If this employee was subject to the two-year foreign residence requirement (see his/her J-1 visa), has this employee obtained a waiver of the two-year foreign residence requirement from USCIS (usually requested on Form I-612)?

- [Yes](#)
- [No](#)

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Priority dates are numerical limitations (preference) assigned to eligible applicants seeking to immigrate to the United States. This is solely due to the maximum number of visas issued per fiscal year that are divided into family sponsored, employment based, and diversity immigration.

Note: the "fiscal year" is from October 1 through September 30.

Priority dates are used to make sure that each eligible person within an immigrant category is considered in chronological order. In other words, a priority date is the person's place in line to immigrate. For employment-based categories, the priority date is either:

1. The date the I-140 is filed, if filing for an immigrant visa category that does not require a labor certification, or
2. The date the approved labor certification was received at the Department of Labor, as indicated on the certification, if filing for an immigrant visa category that does require a labor certification.

Because your immigrant visa category is one of the employment-based categories, a waiting list has been established based on your priority date. To determine when a petition will be next in line for continued processing, the Department of State visa office has established priority cut-off dates. Once the priority date for a particular petition becomes current, the beneficiary (the employee) would then be able to pursue the immigrant visa process outside the United States or, if otherwise eligible, the adjustment of status to permanent resident process inside the United States.

[Check the State Department's visa availability bulletin.](#)

In the bulletin, if "C" is shown in a category, this means immigrant visas are immediately available for all qualified applicants in that category; and

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After reviewing the State Department visa bulletin, does it appear that an immigrant visa is currently available for this employee?

- [Yes](#)
- [No](#)

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In some cases, an employee who is in the United States may be able to file for permanent resident status at the same time the employer files the I-140 petition if an immigrant visa would be immediately available to him or her.

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- [Yes](#)
- [No](#)

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[Bringing Immigrant Workers to the United States](#)

It appears that you may file an immigrant petition for this employee. To start the process you must:

- Obtain a labor certification through the Department of Labor's foreign labor certification process for hiring foreign workers. More information about the foreign labor certification process is available at the Department of Labor web site at <http://www.doleta.gov>.
- File Form I-140 Immigrant Petition for Alien Worker, with USCIS within 180 calendar days of the approval of labor certification.
- Attach the approved labor certification with the I-140 petition.

Please Note: Effective July 16, 2007 USCIS will not accept:

- Expired labor certification.
- The substitution of alien beneficiaries on any application for labor certification submitted after July 16, 2007.

If the employee is outside the United States and if the petition you file on behalf of this employee is approved, it will be sent to the State Department's National Visa Center (NVC). The NVC will pre-process it and forward it to the U.S. Consulate nearest this employee's country of origin. The employee will be notified by the U.S. Consulate to continue processing for an immigrant visa.

It appears that an immigrant visa is immediately available for this immigrant category. If he/she is in the United States and meets all other filing requirements, the employee may wish to consider filing a Form I-485, Application to Register Permanent Residence or Adjust Status, concurrently with Form I-140. For more information please visit our website: www.uscis.gov.

To download the Form I-140 so please visit our website www.uscis.gov.

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If the petition you file on behalf of this employee is approved:

- He/she may remain in the U.S. in another legal status until such time as the immigrant visa becomes available and apply for permanent residence at that time, or
- He/she must depart the U.S because He/she can not adjust his/her status to permanent resident in the United States, and
- The approval notice will be sent to the State Department's National Visa Center (NVC), and
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- File Form I-140 Immigrant Petition for Alien Worker, with USCIS within 180 calendar days of the approval of labor certification.
- Attach your labor certification with your application.

Note: Effective July 16, 2007 USCIS will not accept:

- Expired labor certification.
- The substitution of alien beneficiaries on any application for labor certification submitted after July 16, 2007.

Because this employee:

- Did not enter the United States legally, or
- Entered in a status that is barred from applying for permanent resident status in the United States, or
- Worked in the U.S. without proper authorization some time after January 1, 1977, or
- Violated his/her status in the United States, or
- Is not currently in a valid nonimmigrant status, or
- Entered in A, G or NATO status and has not yet obtained a certification from the Department of State or NATO on Form I-566, or
- Entered in "J" status and has not yet obtained a waiver of the two-year foreign residence requirement, or
- Entered in K-1 fiance(e) status and did not seek permanent residence through marriage to the United States citizen petitioner,

If the petition you file on behalf of this employee is approved:

- He/she will need to depart the U.S because He/she can not adjust his/her status to permanent resident in the United States, and
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- The NVC will pre-process it and forward it to the U.S. Consulate nearest this employee's country of origin, and
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You can download the necessary forms from our website at www.uscis.gov.

Note: Visa processing times vary depending upon the visa category and country of origin of the employee. For more information about visa processing and availability, please see the visa availability list at the State Department's web site at www.state.gov.

General FAQs

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- [What does the petition do for my employee?](#)
- [How do I file for an employee?](#)
- [After I file, how long will it be before my employee can immigrate?](#)
- [What about my employee's family?](#)
- [What happens after I file?](#)
- [How long will it take USCIS to process my petition?](#)
- [Where can I find more information about this process?](#)
- [A chart showing a brief overview of the process that leads to permanent residency based on employment](#)
- [How can I request the consolidated processing of multiple successor-in-interest cases due to a transfer in ownership of the petitioning business?](#)

Who are the employees that I may file for?

A U.S. employer may apply on behalf of a prospective or current employee who is a foreign national inside or outside the United States who may qualify under one or more of the employment-based or “EB” immigrant visa categories.

The EB visa categories are divided into four preference categories. These categories are organized by occupational priorities as mandated by Congress. For more information about each immigrant visa category, please select the appropriate category:

[EB-1 Priority Workers](#)

- Aliens with extraordinary ability in the sciences, arts, education, business or athletics
- Outstanding professors and researchers
- Multinational executives and managers

[EB-2 Professionals with Advanced Degrees or Persons with Exceptional Ability](#)

- 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 U.S.
- Aliens who are members of the professions holding advanced degrees or their equivalent

[EB-3 Professionals, Skilled Workers or Other Workers](#)

- Professionals with a baccalaureate degree
- Aliens with at least two years experience as skilled workers
- Other workers with less than two years experience, such as an unskilled worker who can perform labor for which qualified U.S. workers are not available

[EB-4 Special Immigrants](#)

- Religious workers

What does the petition do for my employee?

Filing a petition shows that you and the prospective employee have an intent to have an employer-employee relationship upon the approval of the petition. Proving your employer-employee relationship and the employee’s qualifications gives your employee a place in line among others waiting to immigrate based on the same kind of “EB” visa category. When the place in line is reached, the employee may be eligible to apply to immigrate.

Your employee’s place in line, known as a “priority date” will be based on the date you file the labor certification with DOL or, if a labor certification is not required, the date your petition is filed with us. So, there is an advantage to filing as soon as possible.

How do I file for an employee?

Determine if the prospective or current employee meets the criteria of one of the four employment-based preference categories. Then the process begins as follows:

- For category 1, file a **Form I-140**, *Immigrant Petition for Alien Worker*, with USCIS.
- For categories 2 and 3, first file a labor certification request, *Application for Permanent Employment Certification*, with the Department of Labor (DOL). Then file the approved labor certification with a **Form I-140** with USCIS within 180 calendar days of the approval.
- The requirement for labor certification has been waived for employees who qualify for a national interest waiver.
- For category 4, file a **Form I-360**, *Petition for Amerasian, Widow(er), or Special Immigrant*, with USCIS.

Note: The substitution of alien beneficiaries is prohibited on any application for labor certification submitted after July 16, 2007. [More information on labor certification validity and the prohibition of labor certification substitutions](#)

After I file, how long will it be before my employee can immigrate?

If an employee entered the U.S. legally and is currently in the U.S. in a legal status (and meets certain other requirements), he/she may be able to file an application to adjust to permanent resident status if the visa category for that employee is “current”.

For other employees that may have to wait, when he/she reaches the “front of the line”, the Department of State contacts your employee and invites him or her to apply for an immigrant visa. If you are interested in current wait times for visa numbers, see “Visa Bulletins” on the State Department’s website at www.travel.state.gov/visa.

How can I request the consolidated processing of multiple successor-in-interest cases due to a transfer in ownership of the petitioning business?

Please call our toll-free number for employers at 1-800-357-2099 for assistance with this question.

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What about my employee's family?

In most cases, when your employee's place in line is reached and he/she applies to immigrate, his/her spouse and unmarried children under 21 can apply as dependents.

What happens after I file?

We will mail you a receipt so you know we have your petition. If your petition is incomplete, we may have to reject it, or we may ask you for more evidence or information. Please send all required documents the first time to avoid delay.

We will notify you when we make a decision. Normally, when we approve the petition, we will send it to the U.S. State Department's National Visa Center (NVC). Once your employee's place in line for a visa number is reached, the NVC will notify you and your employee, inviting him or her and qualifying dependents to apply for immigrant visas. For more information about immigrant visa processing please visit the U.S. State Department's website at www.state.gov.

How long will it take USCIS to process my petition?

Processing time depends on a number of factors. You can check our current processing times on our website. Once you file a petition, we will post an updated estimate of the processing time on the USCIS website.

Where can I find more information about this process?

For information on all the filing requirements and fees for a labor certification request with the Department of Labor, please visit the agency's website at www.foreignlaborcert.doleta.gov.

For specific information regarding each category or qualifying occupation, please refer to our website at www.uscis.gov.

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The following table provides a brief overview of the process that leads to permanent residency based on employment.

Stage	Who Does It	What Happens
1	Employer	Determine if prospective employee or current employee meets the basic criteria for one of the four distinct visa categories, that permanent residency is granted for when based on employment. Which are: EB-1 Priority workers EB-2 Professionals with advanced degrees or Persons with exceptional ability EB-3 Skilled workers, professionals or other workers EB-4 Certain Religious Workers and Certain Other Special Immigrants
2	Employer	Files a labor certification request, Application for Permanent Employment Certification (Form ETA 9089) , with the Department of Labor (DOL). Note: Labor Certification is not required for all employment-based categories.
3	DOL	Grants or denies the certification request. Employer could skip this step if labor certification is not required.
4	Employer	Files on behalf of employee an approved labor certification with an immigrant visa petition, Petition for Alien Worker (Form I-140) or Petition for an Amerasian, Widow(er), or Special immigrant (I-360) , with USCIS. Once you have obtained the approved labor certification from the Department of Labor you must file it in support of the Form I-140 within 180 calendar days of the approval. USCIS must receive the Form I-140 with the supporting approved labor certification on or before the 180 th day of validity. USCIS will reject any I-140 filed with a supporting approved labor certification that is expired.
5	USCIS	Grants or denies Immigrant Petition for Alien Worker (Form I-140) or Petition for an Amerasian, Widow(er), or Special Immigrant (I-360).
6	State Department	Allocates immigrant visa numbers according to priority dates. Note: Priority date is determined by the date that the Form ETA-9089 was filed with the Department of Labor or, if no labor certification was required, the date the Form I-140 was filed with USCIS.
7	Employee	Determines if a visa is available based on their priority date and files for adjustment of status if visa number is available. If the beneficiary 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 nearest U.S. consulate office. Note: Employee may not have to wait for approval of I-140 before filing for adjustment of status as he or she may be eligible for concurrent filing, which is contingent upon visa availability.
8	USCIS or a U.S. Consulate	If beneficiary is inside the U.S. then USCIS will approve or deny the application to adjust status to permanent resident. If beneficiary outside the U.S. then the U.S. Consulate will approve or deny the immigrant visa application.

Bringing Immigrant Workers to the United States
EB-1– Priority Workers

OVERVIEW

The purpose of this classification is to allow aliens with extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, to immigrate permanently to the United States. It also includes outstanding professors or researchers and multinational executives and managers.

EB-1 Priority Workers

Section 4.5.3.1.A [Aliens with extraordinary ability in the sciences, arts, education, business or athletics](#)

Section 4.5.3.1.B [Outstanding professors or researchers](#)

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Bringing Immigrant Workers to the United States EB-1– Priority Workers – Aliens With Extraordinary Ability

OVERVIEW

The purpose of this classification is to allow aliens with extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, to immigrate permanently to the United States.

A "person of extraordinary ability" is an individual who has risen to the very top of his or her field of endeavor. To apply for a visa for a person of extraordinary ability, the employer should submit a Form I-140, "Immigrant Petition for Alien Worker," to USCIS. The employer, who submits Form I-140 on behalf of the foreign national, is called the "petitioner." The employee is called the "beneficiary." If the foreign national submits Form I-140 on his own behalf, the foreign national is the petitioner as well as the beneficiary. To request expedited processing of Form I-140, you may submit a Form I-907, *Request for Premium Processing*, and the appropriate fee. For more information about the fees and filing instructions for Form I-907, please visit our website at www.uscis.gov.

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What does “extraordinary ability” mean?

Extraordinary ability means a level of expertise indicating that the individual is one of a small percentage who has risen to the very top of their particular field.

For example, if you receive a major internationally recognized award, such as a Nobel Prize, you will qualify for the EB-1 visa category. Other awards may also qualify if you can document that the award is in the same class as a Nobel Prize.

Can an alien file for him/herself under this classification?

Yes. An EB-1 worker of extraordinary ability may petition for himself or herself.

Does the business or the self-petitioning alien filing under this classification have to get a labor certification from the Department of Labor?

No. Labor certification is not required for petitions based on EB-1 occupations.

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How does the employer or the self-petitioning alien apply for permanent residency based on extraordinary ability?

The employer or the self-petitioning alien seeking permanent residency based on extraordinary ability follows the process in the following table.

Stage	Action
1	The employer or the self-petitioning alien files a Petition for Alien Worker, Form I-140 , with USCIS. Note: Premium Processing may now be available for Form I-140. For further information, please see Volume 3 . It is possible for the self-petitioning alien to file the I-485 concurrently with the I-140 if a visa number is available.
2	If the beneficiary is in the United States in a legal status, beneficiary files for adjustment of status upon approval of I-140, or, if a visa number is available, at the same time the I-140 is filed. USCIS will approve or deny the application. If the beneficiary 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 nearest U.S. consulate office.
3	If the I-485 is approved, the beneficiary is granted permanent resident status and will be sent a permanent resident card in the mail. If the beneficiary went through the immigrant visa process overseas, beneficiary enters the United States and receives an endorsed immigrant visa attached to his/her passport at the port of entry to serve as evidence of status until they receive their permanent resident card in the mail.

What initial requirements does the petitioner/company/business have to meet?

Although there is no requirement for an offer of employment to aliens with extraordinary ability, there should be clear evidence that the alien is coming to the United States to continue working in the area of expertise.

What evidence can the petitioner provide to demonstrate that the alien is coming to the United States to continue working in the area of expertise?

Examples of evidence that a petitioner can provide to demonstrate that the self-petitioning alien is coming to the United States to continue working in the area of expertise include:

- Letter(s) from prospective employer(s),
- Evidence of prearranged commitments such as contracts,
- Alternatively, a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

What initial requirements or qualifications does the alien have to meet?

The employer or the self-petitioning alien must provide evidence that the alien has sustained national or international acclaim and that the achievements have been recognized in the field experience.

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What evidence can the employer or the self-petitioning alien provide to demonstrate compliance with these requirements?

The employer or the self-petitioning alien must provide the following evidence:

- A one-time achievement (i.e., a major internationally recognized award); or
- At least three of the following;
 - a) Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - b) Membership in associations in the field which demand outstanding achievement of their members;
 - c) Published material about the alien in professional or major trade publications or other major media;
 - d) Evidence that the alien has judged, either individually or on a panel, the work of others;
 - e) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field;
 - f) Evidence of the alien's authorship of scholarly articles in professional or major trade publications or other major media;
 - g) Evidence that the alien's work has been displayed at artistic exhibitions or showcases;
 - h) Performance of a leading or critical role in distinguished organizations;
 - i) Evidence that the alien commands a high salary or other significantly high remuneration in relation to others in the field;
 - j) Evidence of commercial successes in the performing arts.

What is NAICS?

NAICS is the North American Industry Classification System that is used to classify business establishments and is used by USCIS for internal adjudicative purposes. The NAICS code must be listed on the Form I-140.

Where can the employer or the self-petitioning alien obtain the North American Industry Classification System (NAICS) code?

The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau website at www.census.gov/epcd/www/naics.html

What is SOC?

SOC is the Standard Occupational Classification (SOC) System that is used to classify occupations and is used by USCIS for internal adjudicative purposes. The SOC code must be listed on the Form I-140.

Where can the employer or the self-petitioning alien obtain the Standard Occupational Classification (SOC) System codes?

The Standard Occupational Classification (SOC) System codes can be obtained from the Department of Labor, U.S. Bureau of Labor Statistics <http://stats.bls.gov/soc/socguide.htm>

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Is an alien filing under this classification eligible to file the *Application to Register Permanent Residence or Adjust Status (I-485)* concurrently with the *Immigrant Petition for Alien Worker (I-140)*?

The *Application to Register Permanent Residence or Adjust Status (I-485)* may be filed concurrently with the *Immigrant Petition for Alien Worker (I-140)* when a visa is immediately available. Also, if an employment-based petition is pending and no Form I-485 has been filed, the self-petitioning alien may still obtain the benefits of concurrent filing by filing an I-485 with evidence of a previously filed and pending I-140 at any time as long as a visa would be available to him or her.

How can the employer or the self-petitioning alien check for visa availability?

The employer or the self-petitioning alien can check for visa availability by accessing the Department of State's, Bureau of Consular Affairs **Visa Bulletin** at http://www.travel.state.gov/visa/bulletin/bulletin_1360.html

Can the spouse and unmarried children under 21 of an alien with extraordinary ability gain permanent residency through this classification? If so, what and when can they file?

Yes. The spouse and unmarried children under 21 of an alien with extraordinary ability can gain permanent residency based on the principal alien.

Dependents may file Form I-485, *Application for Travel Document (I-131)* and *Application for Employment Authorization (I-765)* concurrently or subsequent to principal alien's I-140 and I-485. To access these Forms, please visit our [Forms and Fees website](#).

If dependents file after the principal alien files his or her I-485, dependents must wait until the principal applicant receives a Form I-797, *Notice of Action* from USCIS. Thereafter, dependents must include a copy of the principal applicant's Form I-797 with their filings. The principal's *Notice of Action* will facilitate matching dependent's subsequent filings with the principal's file.

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How long will it take USCIS to process my petition?

Processing time depends on a number of factors. You can check our current processing times on our website. Once you file your petition, we will post an updated estimate of the processing time on our website at www.uscis.gov. Premium Processing may now be available for Form I-140. For further information, please see [Volume 3](#).

Does an alien under this visa category, with a pending I-485 based on employment, have to obtain work authorization to continue working in the U.S.?

An alien under this category will have to obtain work authorization to work in the U.S. unless in possession of one of the following:

- Valid H-1B status; or
- Valid L-1 status.

Does an alien under this visa category, with a pending I-485 based on employment, have to obtain advance parole before leaving the U.S. to reenter the U.S. after travel abroad?

An alien under this category will have to obtain an advance parole before leaving the U.S. to reenter the U.S. after travel abroad unless in possession of one of the following:

- A valid H-1B visa; or
- A valid L-1 visa.

Is an alien who obtains permanent residency through this classification obligated to continue working for the employer who filed the petition on their behalf?

Due to the American Competitiveness in the Twenty-First Century Act (AC21), an individual whose petition for adjustment of status has been filed and has remained adjudicated for 180 days or more may change employers if the new job is in the same or similar occupational classification as the job for which the petition was filed.

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Bringing Immigrant Workers to the United States EB-1 Priority Workers - Outstanding Professors and Researchers

OVERVIEW

The purpose of this classification is to allow aliens who are outstanding professors and researchers with at least three years experience in teaching or research, and recognized internationally for their outstanding academic achievements in a particular academic field, to immigrate permanently to the United States.

To be considered outstanding, a professor or researcher must be internationally recognized in his or her academic area and meet certain other requirements. To apply for a visa for an outstanding professor or researcher, the employer must submit a Form I-140, *Immigrant Petition for Alien Worker*, to USCIS. The employer who submits Form I-140 on behalf of the foreign national is called the "petitioner." The employee is called the "beneficiary."

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What does “academic field” mean?

Academic field means a body of specialized knowledge offered for study at an accredited United States university or institution of higher education.

Can an alien file for him/herself under this classification?

No. A United States employer must petition for the alien under this classification.

Does the educational institution or business filing under this classification have to get a labor certification from the Department of Labor?

No. Labor certification is not required for this classification. However, there must be an offer of employment from a prospective United States employer.

What kind of position must be offered under this classification?

The position must be a permanent position meaning either tenured, tenure-tracked, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

What kind of employer can provide the offer of employment under this classification?

The offer of employment must be in the form of a letter and come from:

- A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position or permanent research position in the alien's academic field; or
- A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field.

How does the employer apply for permanent residency for an alien who is an outstanding professor or researcher?

The employer seeking permanent residency for an alien who is an outstanding professor or researcher follows the process in the following table:

Stage	Action
1	<p>The employer files a Petition for Alien Worker, Form I-140, and the offer of employment with USCIS.</p> <p>Note: Premium Processing may now be available for Form I-140. For further information, please see Volume 3.</p> <p>Also, it is possible for the alien beneficiary to file the I-485 concurrently with the I-140 if a visa number is available.</p>
2	<p>Upon approval of I-140, the alien beneficiary files for adjustment of status if a visa number is available and the individual is in the U.S.</p> <p>If the beneficiary 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 nearest U.S. consulate office.</p>
3	<p>If the I-485 is approved, the beneficiary is granted permanent resident status and will be sent a permanent resident card in the mail.</p> <p>If the beneficiary went through the immigrant visa process overseas, beneficiary enters the United States and receives an endorsed immigrant visa attached to his/her passport at the port of entry to serve as evidence of status until they receive their permanent resident card in the mail.</p>

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What initial requirements do the petitioner/educational institution/business have to meet?

The prospective employer must demonstrate the ability to pay the proffered wage.

What evidence can the petitioner provide to demonstrate the ability to pay the proffered wage?

Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

What initial requirements or qualifications does the alien beneficiary have to meet?

An outstanding professor or researcher must meet the following requirements in order to be classified as such:

- At least three years experience in teaching or research in a particular academic area, and
- Seeks to enter the U.S. for a tenured or tenure track teaching position or comparable research position at a university or other institution of higher education or a private employer; and
- Evidence that the professor or researcher is recognized internationally as outstanding in their particular academic field.

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What evidence can the employer provide to demonstrate that the alien beneficiary meets these requirements?

To demonstrate that the alien beneficiary meets these three requirements, the following documents must be submitted:

1. Evidence of at least three years experience in teaching or research in a particular academic area:
Letter(s) from current or former employer(s) including
 - The name, address, and title of the writer, and
 - A specific description of the duties performed by the alien.
2. An offer of employment from the prospective United States employer offering the alien beneficiary a tenured or tenure track teaching position or comparable research position.
3. Evidence that the professor or researcher is recognized internationally as outstanding in their particular academic field as shown by documentation of at least two of the following:
 - Receipt of major prizes or awards for outstanding achievement;
 - Membership in associations that require their members to demonstrate outstanding achievements;
 - Published material in professional publications written by others about the alien's work in the academic field;
 - Participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field;
 - Original scientific or scholarly research contributions in the field;
 - Authorship of scholarly books or articles (in scholarly journals with international circulation) in the field.

What is NAICS?

NAICS is the North American Industry Classification System that is used to classify business establishments and is used by USCIS for internal adjudicative purposes. The NAICS code must be listed on the Form I-140.

Where can the employer obtain the North American Industry Classification System (NAICS) code?

The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau website at www.census.gov/epcd/www/naics.html

What is SOC?

SOC is the Standard Occupational Classification (SOC) System that is used to classify occupations and is used by USCIS for internal adjudicative purposes. The SOC designation must be listed on the Form I-140.

Where can the employer obtain the Standard Occupational Classification (SOC) System codes?

The Standard Occupational Classification (SOC) System codes can be obtained from the Department of Labor, U.S. Bureau of Labor Statistics <http://stats.bls.gov/soc/socguide.htm>

Is the alien beneficiary filing under this classification eligible to file the *Application to Register Permanent Residence or Adjust Status (I-485)* concurrently with the *Petition for Alien Worker (I-140)*?

The *Application to Register Permanent Residence or Adjust Status (I-485)* may be filed concurrently with the *Immigrant Petition for Alien Worker (I-140)* when a visa is immediately available. Also, if an employment-based petition is pending and no Form I-485 has been filed, the alien may still obtain the benefits of concurrent filing by filing an I-485 at any time as long as a visa would be available to him or her.

How can the employer check for visa availability?

The employer can check for visa availability by accessing the Department of State's, Bureau of Consular Affairs **Visa Bulletin** at: http://www.travel.state.gov/visa/bulletin/bulletin_1360.html

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Can the spouse and unmarried children under 21 of an outstanding professor or researcher gain permanent residency through this classification? If so, what and when can they file?

Yes. The spouse and unmarried children under 21 of an outstanding professor or researcher can gain permanent residency based on the principal alien. Dependents may file Form I-485, *Application for Travel Document* (I-131) and *Application for Employment Authorization* (I-765) concurrently or subsequent to principal alien's I-140 and I-485. To access these Forms, please visit our [Forms and Fees website](#).

If dependents file after the principal alien files his or her I-485, dependents must wait until the principal applicant receives a Form I-797, *Notice of Action* from USCIS. Thereafter, dependents must include a copy of the principal applicant's Form I-797 with their filings. The principal's *Notice of Action* will facilitate matching dependent's subsequent filings with the principal's file, thereby reducing the chances of delays in the file routing.

Does an alien under this classification, with a pending I-485 based on employment, have to obtain work authorization to continue working in the U.S.?

An alien under this classification will have to obtain work authorization to work in the U.S. unless in possession of one of the following:

- A valid H-1B status; or
- A valid L-1 status.

Does an alien under this classification, with a pending I-485 based on employment, have to obtain advance parole before leaving the U.S. to reenter the U.S. after travel abroad?

An alien under this classification will have to obtain an advance parole before leaving the U.S. in order to reenter the U.S. after travel abroad unless in possession of one of the following:

- A valid H-1B visa; or
- A valid L-1 visa.

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Is an alien who obtains permanent residency through this classification obligated to continue working for the employer who filed the petition on their behalf?

Due to the American Competitiveness in the Twenty-First Century Act (AC21), an individual whose petition for adjustment of status has been filed and has remained unadjudicated for 180 days or more may change employers if the new job is in the same or similar occupational classification as the job for which the petition was filed.

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Bringing Immigrant Workers to the United States EB-1 Priority Workers - Multinational Executive or Manager

OVERVIEW

The purpose of this classification is to allow aliens who are executives and managers of U.S. companies or foreign companies with branches, affiliates, branches or subsidiaries in the U.S., and who are seeking to enter the U.S. to continue service to that company, to immigrate permanently to the United States.

To qualify for admission as an immigrant, a multinational executive or manager must have been employed in a managerial or executive capacity for at least one out of the past three years. The past employment must be with the same employer, an affiliate, parent company, or subsidiary. The petitioning employer must have been doing business in the U.S. for at least one year. To apply for a visa for a multinational executive or manager, the employer must submit a Form I-140, *Immigrant Petition for Alien Worker*, to USCIS. The employer who submits a Form I-140 on behalf of the foreign national is called the "petitioner." The employee is called the "beneficiary."

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- [Does an alien under this classification, with a pending I-485 based on employment, have to obtain work authorization to continue working in the U.S.?](#)
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- [Is an alien who obtains permanent residency through this classification obligated to continue working for the employer who filed the petition on their behalf?](#)

[Self-guided information in helping an employee in this category immigrate](#)

What does “doing business” mean?

Doing business means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

What does “executive capacity” mean?

Executive capacity means an assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

What does “managerial capacity” mean?

Managerial capacity means an assignment within an organization in which the employee primarily:

- Manages the organization, or a department, subdivision, function, or component of the organization;
- Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions, or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function; and
- Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

What does “multinational” mean?

Multinational means that the qualifying business entity, or its affiliate or subsidiary, conducts business in two or more countries, one of which is the United States.

Can an alien file for him/herself under this classification?

No. A United States employer must petition for the alien under this classification.

Does the business filing under this classification have to get a labor certification from the Department of Labor?

No. Labor certification is not required for this classification. However, there must be an offer of employment from a prospective United States employer.

What initial requirements does the petitioner/company/business have to meet?

The prospective employer must be a U.S. employer, demonstrate the ability to pay the proffered wage, be the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity that employed the alien overseas, and must have been doing business for at least one year.

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How does the employer apply for permanent residency for an alien who is a multinational executive or manager?

The employer seeking permanent residency for an alien who is a multinational executive or manager follows the process in the following table.

Stage	Action
1	<p>The employer files a Petition for Alien Worker, Form I-140, and the offer of employment with USCIS. Note: Premium Processing may now be available for Form I-140. For further information, please see Volume 3. Also, it is possible for the alien beneficiary to file the I-485 concurrently with the I-140 if a visa number is available.</p>
2	<p>Upon approval of the I-140, the alien beneficiary files for adjustment of status if a visa number is available and the individual is in the U.S.</p> <p>If the beneficiary 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 nearest U.S. consulate office.</p>
3	<p>If the I-485 is approved, the beneficiary is granted permanent resident status and will be sent a permanent resident card in the mail.</p> <p>If the beneficiary went through the immigrant visa process overseas, beneficiary enters the United States and receives an endorsed immigrant visa attached to his/her passport at the port of entry to serve as evidence of status until they receive their permanent resident card in the mail.</p>

What evidence can the petitioner provide to demonstrate they meet these initial requirements?

Evidence of the ability to pay proffered wage shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Evidence of the fact that the petitioner is the same employer and has been doing business for a year shall be a statement that indicates the alien:

- Is to be employed by the same employer or a subsidiary or affiliate by which the alien was employed abroad; and
- The employer has been doing business for one year.

What initial requirements or qualifications does the alien beneficiary have to meet?

The multinational manager or executive must have:

- Been employed for at least one year outside the U.S. in the three years immediately preceding the filing of the petition by the company, if the beneficiary is outside the U.S.;
- Been employed for at least one year in the three years preceding entry as a nonimmigrant, if the beneficiary is already in the U.S. working for the same employer or a subsidiary or affiliate by which the alien was employed abroad;
- The employment outside the United States must have been in a managerial or executive capacity and with the same employer, an affiliate, or a subsidiary of the employer.

What initial evidence can the employer provide to demonstrate that the alien beneficiary meets these requirements?

The employer must provide a statement stating that the employee has:

- Been employed for at least one year outside the U.S. in the three years immediately preceding the filing of the petition by the company, if the beneficiary is outside the U.S.;
- Been employed for at least one year in the three years preceding entry as a nonimmigrant, if the beneficiary is already in the U.S. working for the same employer or a subsidiary or affiliate by which the alien was employed abroad;
- The employment outside the United States must have been in a managerial or executive capacity and with the same employer, an affiliate, or a subsidiary of the employer.

What is NAICS?

NAICS is the North American Industry Classification System that is used to classify business establishments and is used by USCIS for internal adjudicative purposes.

Where can the employer obtain the North American Industry Classification System (NAICS) code?

The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau website at www.census.gov/epcd/www/naics.html

What is SOC?

SOC is the Standard Occupational Classification (SOC) System that is used to classify occupations and is used by USCIS for internal adjudicative purposes.

Where can the employer obtain the Standard Occupational Classification (SOC) System codes?

The Standard Occupational Classification (SOC) System codes can be obtained from the Department of Labor, U.S. Bureau of Labor Statistics <http://stats.bls.gov/soc/socguide.htm>

Is the alien beneficiary filing under this classification eligible to file the *Application to Register Permanent Residence or Adjust Status (I-485)* concurrently with the *Petition for Alien Worker (I-140)*?

The *Application to Register Permanent Residence or Adjust Status (I-485)* may be filed concurrently with the *Immigrant Petition for Alien Worker (I-140)* when a visa is immediately available. Also, if an employment-based petition is pending and no Form I-485 has been filed, the alien may still obtain the benefits of concurrent filing by filing an I-485 at any time as long as a visa would be available to him or her.

How can the employer check for visa availability?

The employer can check for visa availability by accessing the Department of State's, Bureau of Consular Affairs **Visa Bulletin** at: http://www.travel.state.gov/visa/bulletin/bulletin_1360.html

Can the spouse and unmarried children under 21 of a multinational executive or manager gain permanent residency through this classification? If so, what and when can they file?

Yes. The spouse and unmarried children under 21 of a multinational executive or manager can gain permanent residency based on the principal alien. Dependents may file Form I-485, *Application for Travel Document (I-131)* and *Application for Employment Authorization (I-765)* concurrently or subsequent to principal alien's I-140 and I-485. To access these Forms, please visit our [Forms and Fees website](#).

If dependents file after the principal alien files his or her I-485, dependents must wait until the principal applicant receives a Form I-797, *Notice of Action* from USCIS. Thereafter, dependents must include a copy of the principal applicant's Form I-797 with their filings. The principal's *Notice of Action* will facilitate matching dependent's subsequent filings with the principal's file, thereby reducing the chances of delays in the file routing.

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Does an alien under this classification, with a pending I-485 based on employment, have to obtain work authorization to continue working in the U.S.?

An alien under this classification will have to obtain work authorization to work in the U.S. unless in possession of one of the following:

- Valid H-1B status; or
- Valid L-1 status.

Does an alien under this classification, with a pending I-485 based on employment, have to obtain advance parole before leaving the U.S. to reenter the U.S. after travel abroad?

An alien under this classification will have to obtain an advance parole before leaving the U.S. to reenter the U.S. after travel abroad unless in possession of one of the following:

- A valid H-1B visa; or
- A valid L-1 visa.

Is an alien who obtains permanent residency through this classification obligated to continue working for the employer who filed the petition on their behalf?

Due to the American Competitiveness in the Twenty-First Century Act (AC21), an individual whose petition for adjustment of status has been filed and has remained adjudicated for 180 days or more may change employers if the new job is in the same or similar occupational classification as the job for which the petition was filed.

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Bringing Immigrant Workers to the United States EB-2 Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability Sciences, Arts, or Business

OVERVIEW

The purpose of this classification is to allow aliens who are professionals with advanced degrees or persons with exceptional ability in the sciences, arts, or business to immigrate permanently to the United States with the intent of working in a permanent position for a U.S. employer.

To demonstrate that an employee or prospective employee is a person of exceptional ability in the sciences, arts, or business, an employer must submit a Form I-140, "Immigrant Petition for Alien Worker," to USCIS. Normally, an employer, who submits a petition for an employee in this visa preference category, must first file for labor certification with the U.S. Department of Labor. The employer must then submit a copy of the labor certification, approved by the Department of Labor, to USCIS along with Form I-140. However, there is an exception or "waiver" to this requirement if the individual's employment would be in the "national interest".

The approval of a "National Interest Waiver" by USCIS is discretionary. National Interest waivers are reviewed on a case-by-case basis. While there are other requirements, a petitioner who requests a National Interest Waiver should be able to establish that employment of the foreign national will fulfill at least one of the following criteria: improve the U.S. economy; improve the wages and working conditions of U.S. workers; improve education or training programs for U.S. children and under-qualified workers; improve health care; provide more affordable housing for poor U.S. residents; improve the environment and make more productive use of natural resources; or show that the employment is at the request of a U.S. Government agency.

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- [Does an alien under this classification, with a pending I-485 based on employment, have to obtain work authorization to continue working in the U.S.?](#)
- [Does an alien under this classification, with a pending I-485 based on employment, have to obtain advance parole before leaving the U.S. to reenter the U.S. after travel abroad?](#)
- [Is an alien who obtains permanent residency through this classification obligated to continue working for the employer who filed the petition on their behalf?](#)

What is considered an “advanced degree”?

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of bachelor’s degree. In addition, a United States bachelor’s degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.

What is considered exceptional ability in the sciences, arts, or business?

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

How is a profession defined for this classification?

Profession means one of the occupations that are recognized as such by immigration law, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

Can an alien file for him/herself under this classification?

No. A United States employer must petition for the alien under this classification. An exception is if an alien is seeking a national interest waiver.

Does the business filing under this classification have to get a labor certification from the Department of Labor?

Yes. Labor certification must be obtained from the Department of Labor by filing an *Application for Permanent Employment Certification* (ETA 9089). An exception is if an alien is seeking a national interest waiver.

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How does the employer apply for permanent residency for an alien who is a professional with an advanced degree or a person with exceptional ability in the sciences, arts, or business?

The employer seeking permanent residency for an alien who is a professional with an advanced degree or a person with exceptional ability in the sciences, arts, or business follows the process in the following table:

Stage	Action
1	The employer files an Application for Permanent Employment Certification, ETA 9089 , with the Department of Labor. If the alien is seeking a national interest waiver, labor certification is not required.
2	<p>The employer files a Petition for Alien Worker, Form I-140, and the approved labor certification request with USCIS.</p> <p>Effective July 16, 2007, once you have obtained the approved labor certification from the Department of Labor you must file it in support of the Form I-140 within 180 calendar days of the approval. USCIS must receive the Form I-140 with the supporting approved labor certification on or before the 180th day of validity. USCIS will reject any I-140 filed with a supporting approved labor certification that is expired.</p> <p>Note: Premium Processing may now be available for Form I-140. For further information, please see Volume 3.</p> <p>Also, it is possible for the alien beneficiary to file the I-485 concurrently with the I-140 if a visa number is available.</p>
3	<p>Upon approval of I-140, the alien beneficiary files for adjustment of status if a visa number is available and the individual is in the U.S.</p> <p>If the beneficiary 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 nearest U.S. consulate office.</p>
4	<p>If the I-485 is approved, the beneficiary is granted permanent resident status and will be sent a permanent resident card in the mail.</p> <p>If the beneficiary went through the immigrant visa process overseas, beneficiary enters the United States and receives an endorsed immigrant visa attached to his/her passport at the port of entry to serve as evidence of status until they receive their permanent resident card in the mail.</p>

What initial requirements does the petitioner/company/business have to meet?

The prospective employer must be a U.S. employer and demonstrate the ability to pay the proffered wage.

What evidence can the petitioner provide to demonstrate the ability to pay the proffered wage?

Evidence of the ability to pay the proffered wage shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

What initial requirements or qualifications does an alien who is a professional with an advanced degree have to meet?

The alien must have a U.S. advanced degree or a foreign equivalent degree, or have a U.S. bachelor's degree or a foreign equivalent degree and at least 5 years of progressive post-baccalaureate experience in the specialty.

What initial evidence can the employer provide to demonstrate that a professional with an advanced degree meets these requirements?

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

- An official academic record showing that the alien has a
 - a) United States advanced degree
 - b) Or a foreign equivalent degree;

Or

- An official academic record showing that the alien has a
 - a) United States bachelors degree
 - b) Or a foreign equivalent degree,
 - c) And evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-bachelor experience in the specialty.

What initial requirements or qualifications does an alien who is a person with exceptional ability in the sciences, arts, or business beneficiary have to meet?

The employer must provide evidence that shows that the alien has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

What initial evidence can the employer provide to demonstrate that a person with exceptional ability in the sciences, arts, or business meets these requirements?

To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

- An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least 10 years of full-time experience in the occupation for which he or she is being sought;
- A license to practice the profession or certification for a particular profession or occupation;
- Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- Evidence of membership in professional associations; or
- Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Note: If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

What is NAICS?

NAICS is the North American Industry Classification System that is used to classify business establishments and is used by USCIS for internal adjudicative purposes. The NAICS Code must be listed on the Form I-140.

Where can the employer obtain the North American Industry Classification System (NAICS) code?

The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau website at www.census.gov/epcd/www/naics.html

What is SOC?

SOC is the Standard Occupational Classification (SOC) System that is used to classify occupations and is used by USCIS for internal adjudicative purposes. The SOC designation must be listed on the Form I-140.

Where can the employer obtain the Standard Occupational Classification (SOC) System codes?

The Standard Occupational Classification (SOC) System codes can be obtained from the Department of Labor, U.S. Bureau of Labor Statistics <http://stats.bls.gov/soc/socguide.htm>

Is the alien beneficiary filing under this classification eligible to file the *Application to Register Permanent Residence or Adjust Status (I-485)* concurrently with the *Petition for Alien Worker (I-140)*?

The *Application to Register Permanent Residence or Adjust Status (I-485)* may be filed concurrently with the *Immigrant Petition for Alien Worker (I-140)* when a visa is immediately available. Also, if an employment-based petition is pending and no Form I-485 has been filed, the alien may still obtain the benefits of concurrent filing by filing an I-485 at any time as long as a visa would be available to him or her.

How can the employer check for visa availability?

The employer can check for visa availability by accessing the Department of State's, Bureau of Consular Affairs **Visa Bulletin** at: http://www.travel.state.gov/visa/bulletin/bulletin_1360.html

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Can the spouse and unmarried children under 21 of a professional with an advanced degree or a person with exceptional ability in the sciences, arts, or business gain permanent residency through this category? If so, what and when can they file?

Yes. The spouse and unmarried children under 21 of a professional with an advanced degree or a person with exceptional ability in the sciences, arts, or business can gain permanent residency based on the principal alien. Dependents may file Form I-485, *Application for Travel Document* (I-131) and *Application for Employment Authorization* (I-765) concurrently or subsequent to principal alien's I-140 and I-485. To access these Forms, please visit our [website](http://www.uscis.gov) www.uscis.gov.

If dependents file after the principal alien files his or her I-485, dependents must wait until the principal applicant receives a Form I-797, *Notice of Action* from USCIS. Thereafter, dependents must include a copy of the principal applicant's Form I-797 with their filings. The principal's *Notice of Action* will facilitate matching dependent's subsequent filings with the principal's file, thereby reducing the chances of delays in the file routing.

Does an alien under this classification with a pending I-485 based on employment have to obtain work authorization to continue working in the U.S.?

An alien under this classification will have to obtain work authorization to work in the U.S. unless in possession of one of the following:

- Valid H-1B status; or
- Valid L-1 status.

Does an alien under this classification with a pending I-485 based on employment have to obtain advance parole before leaving the U.S. to reenter the U.S. after travel abroad?

An alien under this classification will have to obtain an advance parole before leaving the U.S. in order to reenter the U.S. after travel abroad unless in possession of one of the following:

- A valid H-1B visa; or
- A valid L-1 visa.

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Is an alien who obtains permanent residency through this classification obligated to continue working for the employer who filed the petition on their behalf?

Due to the American Competitiveness in the Twenty-First Century Act (AC21), an individual whose petition for adjustment of status has been filed and has remained unadjudicated for 180 days or more may change employers if the new job is in the same or similar occupational classification as the job for which the petition was filed.

Note: In the case of a national interest waiver, if the waiver was based upon the applicant's work for a particular employer, the applicant may not change employers. However, if the waiver was based upon the applicant's contribution to an industry which could be utilized by another employer, the applicant may be able to change employers.

How can I request the consolidated processing of multiple successor-in-interest cases due to a transfer in ownership of the petitioning business?

Please call our toll-free number for employers at 1-800-357-2099 for assistance with this question.

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Bringing Immigrant Workers to the United States EB-3 Skilled Workers, Professionals, and Other Workers

OVERVIEW

The purpose of this classification is to allow aliens who are skilled workers, professionals with bachelor's degrees, and unskilled workers to immigrate permanently to the United States with the intent of working in a permanent position for a U.S. employer.

When submitting an immigrant petition for a foreign national in the category of a skilled worker, professional, or unskilled worker, an employer must first obtain a labor certification from the U.S. Department of Labor for the position that is being offered. Once the employer has obtained approval, the employer must submit a copy of the approved certification from the Department of Labor to USCIS along with a Form I-140, *Immigrant Petition for Alien Worker*.

Under this category, a qualified "skilled worker" is a person capable of performing an occupation that requires at least two years of training or experience, which is not of a temporary or seasonal nature, for which qualified workers are not available in the U.S.

Under this category, a "professional" holds a baccalaureate degree and is a member of the professions.

Under this category, other "unskilled workers" are those who are capable of performing unskilled labor that requires less than two years of training or experience, which is not of a temporary or seasonal nature, for which qualified workers are not available in the U.S.

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- [Does an alien under this classification with a pending I-485 based on employment have to obtain work authorization to continue working in the U.S.?](#)
- [Does an alien under this classification with a pending I-485 based on employment have to obtain advance parole before leaving the U.S. to reenter the U.S. after travel abroad?](#)
- [Is an alien who obtains permanent residency through this classification obligated to continue working for the employer who filed the petition on their behalf?](#)

What does “skilled worker” mean?

Skilled worker means an alien who, at the time the petition is filed, meets the following:

- Capable of performing skilled labor which requires at least two years training or experience,
- Employment is not of a temporary or seasonal nature, and
- Qualified workers are not available in the United States.

What does “professional” mean?

Professional means a qualified alien who holds at least a United States bachelor’s degree or a foreign equivalent degree and who is a member of the professions.

What does “other worker” mean?

Other worker means a qualified alien who, at the time the petition is filed, meets the following:

- Capable of performing unskilled labor which requires less than two years training or experience,
- Employment is not of a temporary or seasonal nature, and
- Qualified workers are not available in the United States.

Can an alien file for him/herself under this classification?

No. A United States employer must petition for the alien under this classification.

Does the business filing under this classification have to get a labor certification from the Department of Labor?

Yes. Labor certification must be obtained from the Department of Labor by filing an *Application for Permanent Employment Certification* (ETA 9089).

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How does the employer apply for permanent residency for an alien who is a skilled worker, professional, and other worker?

The employer seeking permanent residency for an alien, who is a skilled worker, professional, and other worker follows the process in the following table:

Stage	Action
1	The employer files an Application for Permanent Employment Certification, ETA 9089 , with the Department of Labor.
2	<p>The employer files a Petition for Alien Worker, Form I-140, and the approved labor certification request with USCIS.</p> <p>Effective July 16, 2007, once you have obtained the approved labor certification from the Department of Labor you must file it in support of the Form I-140 within 180 calendar days of the approval. USCIS must receive the Form I-140 with the supporting approved labor certification on or before the 180th day of validity. USCIS will reject any I-140 filed with a supporting approved labor certification that is expired.</p> <p>Note: Premium Processing may now be available for Form I-140. For further information, please see Volume 3.</p> <p>Also, it is possible for the alien beneficiary to file the I-485 concurrently with the I-140 if a visa number is available.</p>
3	<p>Upon approval of I-140, the alien beneficiary files for adjustment of status if a visa number is available and the individual is in the U.S.</p> <p>If the beneficiary 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 nearest U.S. consulate office.</p>
4	<p>If the I-485 is approved, the beneficiary is granted permanent resident status and will be sent a permanent resident card in the mail.</p> <p>If the beneficiary went through the immigrant visa process overseas, beneficiary enters the United States and receives an endorsed immigrant visa attached to his/her passport at the port of entry to serve as evidence of status until they receive their permanent resident card in the mail.</p>

What initial requirements does the petitioner/company/business have to meet?

The prospective employer must be a U.S. employer and demonstrate the ability to pay the proffered wage.

What evidence can the petitioner provide to demonstrate the ability to pay the proffered wage?

Evidence of the ability to pay the proffered wage shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

What initial requirements or qualifications does an alien who is a skilled worker, professional, and other worker have to meet?

In order to meet the initial qualifications for the skilled workers, professionals or other workers classifications:

- Skilled workers cannot work in seasonal or temporary employment and require at least two years of experience or training. The training requirement may be met through relevant post-secondary education (i.e. trade school).
- Professionals must hold an U.S. bachelor's degree or foreign equivalent degree that is normally required for the profession. A combination of education and experience may not be substituted for the degree.
- Other workers (i.e., unskilled workers) must work in positions that require less than two years of higher education, training, or experience. The employment cannot be of a seasonal or temporary nature.

How can I request the consolidated processing of multiple successor-in-interest cases due to a transfer in ownership of the petitioning business?

Please call our toll-free number for employers at 1-800-357-2099 for further assistance with this question.

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What initial evidence can the employer provide to demonstrate that a skilled worker, professional, and other worker meet these requirements?

The following table indicates the initial evidence needed to meet the preliminary requirements for skilled worker, professional or other worker positions.

If the employee is a...	Then the employer must file the following initial evidence with the I-140 petition:
Skilled Worker	<p>Letters that demonstrate that the alien meets the 2-year educational and training requirement and any other requirements of the individual labor certification.</p> <p>In addition, supplying the following information from trainers:</p> <ul style="list-style-type: none"> • Name, address, and title of the trainer and • A description of the training received. <p>Letters that demonstrate that the alien meets the 2-year experience requirement and any other requirements of the individual labor certification.</p> <p>In addition, supplying the following information from employers</p> <ul style="list-style-type: none"> • Name, address, and title of the employer and • The experience of the alien.
Professional	<p>To show evidence that the alien holds a United States bachelor's degree or a foreign equivalent degree, the employer must supply:</p> <ul style="list-style-type: none"> • An official college or university record showing the date the bachelor's degree was awarded and the area of concentration of study. <p>To show that the alien is a member of the professions, the employer must submit evidence:</p> <ul style="list-style-type: none"> • That the minimum of a bachelor's degree is required for entry into the occupation. <p>If there are any additional requirements of training or experience the employer should supply the following:</p> <p>Letters that demonstrate that the alien meets the training requirement of the individual labor certification.</p> <p>In addition, supplying the following information from trainers:</p> <ul style="list-style-type: none"> • Name, address, and title of the trainer and • A description of the training received. <p>Letters that demonstrate that the alien meets the experience requirement of the individual labor certification.</p> <p>In addition, supplying the following information from employers:</p> <ul style="list-style-type: none"> • Name, address, and title of the employer and • The experience of the alien.

Table continues on next page

Other Worker	<p>To show evidence that the alien meets any educational, training and experience, and other requirements of the labor certification the employer must supply:</p> <p>Letters that demonstrate that the alien meets the training requirement of the individual labor certification. In addition, supplying the following information from trainers:</p> <ul style="list-style-type: none"> • Name, address, and title of the trainer and • A description of the training received. <p>Letters that demonstrate that the alien meets the experience requirement of the individual labor certification. In addition, supplying the following information from employers:</p> <ul style="list-style-type: none"> • Name, address, and title of the employer and • The experience of the alien.
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What is NAICS?

NAICS is the North American Industry Classification System that is used to classify business establishments and is used by USCIS for internal adjudicative purposes. The NAICS Code must be listed on the Form I-140.

Where can the employer obtain the North American Industry Classification System (NAICS) code?

The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau website at www.census.gov/epcd/www/naics.html

What is SOC?

SOC is the Standard Occupational Classification (SOC) System that is used to classify occupations and is used by USCIS for internal adjudicative purposes. The SOC designation must be listed on the Form I-140.

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Where can the employer obtain the Standard Occupational Classification (SOC) System codes?

The Standard Occupational Classification (SOC) System codes can be obtained from the Department of Labor, U.S. Bureau of Labor Statistics <http://stats.bls.gov/soc/socguide.htm>

Is the alien beneficiary filing under this classification eligible to file the *Application to Register Permanent Residence or Adjust Status (I-485)* concurrently with the *Petition for Alien Worker (I-140)*?

The *Application to Register Permanent Residence or Adjust Status (I-485)* may be filed concurrently with the *Immigrant Petition for Alien Worker (I-140)* when a visa is immediately available. Also, if an employment-based petition is pending and no Form I-485 has been filed, the alien may still obtain the benefits of concurrent filing by filing an I-485 at any time as long as a visa would be available to him or her.

How can the employer check for visa availability?

The employer can check for visa availability by accessing the Department of State's, Bureau of Consular Affairs **Visa Bulletin** at: http://www.travel.state.gov/visa/bulletin/bulletin_1360.html

Can the spouse and unmarried children under 21 of a skilled worker, professional or other worker gain permanent residency through this category? If so, what and when can they file?

Yes. The spouse and unmarried children under 21 of a skilled worker, professional, or other worker can gain permanent residency based on the principal alien. Dependents may file Form I-485, *Application for Travel Document (I-131)* and *Application for Employment Authorization (I-765)* concurrently or subsequent to principal alien's I-140 and I-485.

If dependents file after the principal alien files his or her I-485, dependents must wait until the principal applicant receives a Form I-797, *Notice of Action* from USCIS. Thereafter, dependents must include a copy of the principal applicant's Form I-797 with their filings. The principal's *Notice of Action* will facilitate matching dependent's subsequent filings with the principal's file, thereby reducing the chances of delays in the file routing. To access these Forms, please visit our [Forms and Fees website](#).

Does an alien under this classification with a pending I-485 based on employment have to obtain work authorization to continue working in the U.S.?

An alien under this classification will have to obtain work authorization to work in the U.S. unless in possession of one of the following:

- A valid H-1B status; or
- A valid L-1 status.

Does an alien under this classification with a pending I-485 based on employment have to obtain advance parole before leaving the U.S. to reenter the U.S. after travel abroad?

An alien under this classification will have to obtain an advance parole before leaving the U.S. to reenter the U.S. after travel abroad unless in possession of one of the following:

- A valid H-1B visa; or
- A valid L-1 visa.

Is an alien who obtains permanent residency through this classification obligated to continue working for the employer who filed the petition on their behalf?

Due to the American Competitiveness in the Twenty-First Century Act (AC21), an individual whose petition for adjustment of status has been filed and has remained adjudicated for 180 days or more may change employers if the new job is in the same or similar occupational classification as the job for which the petition was filed.

Bringing Immigrant Workers to the United States EB-4 Certain Religious Workers

OVERVIEW

An immigrant religious worker falls into a special visa preference category. An immigrant religious worker is a foreign national who has:

- 1) for the two years prior to filing the immigrant visa petition been a member of a religious denomination which has a bona fide, non-profit religious organization in the United States; and
- 2) seeks to enter the U.S, to work full time in a compensated position, solely to carry on his or her vocation as a minister, seeks to work in a professional or nonprofessional capacity in a religious vocation or occupation for a bona fide, nonprofit religious organization in the U.S. or its affiliate in the U.S; and
- 3) has been working as a minister or in a religious vocation or occupation, either abroad or in *lawful status* in the U.S. for at least the two year period immediately preceding the filing of the petition.

In most situations, the employer submits a Form I-360, *Petition for Amerasian, Widow/Widower, or Special Immigrant*, to USCIS on behalf of the foreign national. However, the foreign national may also submit a Form I-360 on his own behalf. Effective November 26, 2008 revisions were made to the religious worker regulations. These revisions ensure the integrity of the program while streamlining the process for legitimate petitioners.

Note: There are other classifications that fall under this visa category. These other classifications are as follows: Panama Canal Company Employee or Canal Zone Government Employee; U.S. Government in the Canal Zone Employee; Physician; International Organization Employee or Family Member; Armed Forces Member; or Iraqi or Afghan U.S Military Translators. If you want information on these classifications please call our toll-free number for employers at 1-800-357-2099.

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FAQs regarding recent changes to filing for adjustment of status to permanent resident due to the court case of *Ruiz-Diaz v. U.S.*

- [What did the court decide in Ruiz-Dias v. United States?](#)
- [Who is affected by the court's decision?](#)

What is considered a “bona fide nonprofit religious organization”?

A bona fide nonprofit religious organization is a religious organization exempt from taxation. A bona fide nonprofit religious organization must possess a currently valid IRS section 501(c)(3) determination letter to demonstrate nonprofit status.

What is considered a “bona fide organization, which is affiliated with the religious denomination”?

An organization is considered a “bona fide organization, which is affiliated with the religious denomination” when it is closely associated with the religious denomination, is tax exempt and in possession of a currently valid determination letter from the IRS confirming such exemption,

Affiliated organizations or petitioning organizations that are not classified as religious organizations by the IRS must establish that they are tax-exempt and provide documentation that demonstrates their religious nature and purpose as well as a certification by a tax-exempt religious organization in their denomination. Such organizations must also submit the *Religious Denomination Certification* in the revised Form I-360 (with an edition date of November 26, 2008).

What does “minister” mean?

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion.

What does “professional capacity” mean?

Professional capacity means an activity in a religious vocation or occupation that requires the minimum of a United States bachelor’s degree or a foreign equivalent degree to perform it.

What is considered a “religious denomination”?

The term *religious denomination* applies to a religious group or community of believers governed or administered under some form of ecclesiastical government. USCIS acknowledges that some denominations lack a central government. Accordingly, the religious entity may satisfy the “ecclesiastical government” requirement by submitting a description of its own internal governing or organizational structure.

What does “religious occupation” mean?

Religious occupation means an activity that relates to a traditional religious function that is recognized as a religious occupation within the denomination.

What does “religious vocation” mean?

Religious vocation means a formal lifetime commitment to a religious way of life evidenced by vows, investitures, ceremonies, or similar evidence. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as compared to secular members. Examples of individuals with a religious vocation include but are not limited to nuns, monks, and religious brothers and sisters.

Can an alien file for him/herself under this classification?

Yes. A religious worker may file for him/herself or the religious organization may file on their behalf under the religious worker classification.

Does the religious organization or the self-petitioning alien filing under this classification have to get a labor certification from the Department of Labor?

Religious workers do not have to obtain labor certification from the Department of Labor to be petitioned for under this classification. However, they must obtain a job offer from an authorized official of the religious organization.

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How does the employer or self-petitioning alien apply for permanent residency for an alien who is a religious worker?

The employer or the self-petitioning alien seeking permanent residency based on the alien being a religious worker follows the process in the following table:

Stage	Action
1	The employer or the self-petitioning alien files a Petition for Amerasian, Widow (er), or Special Immigrant, I-360 , with USCIS.
2	Upon approval of I-360, the alien files for adjustment of status if a visa number is available and the individual is in the U.S. If the alien 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 nearest U.S. consulate office.
3	If the I-485 is approved, the beneficiary is granted permanent resident status and will be sent a permanent resident card in the mail. If the beneficiary went through the immigrant visa process overseas, beneficiary enters the United States and receives an endorsed immigrant visa attached to his/her passport at the port of entry to serve as evidence of status until they receive their permanent resident card in the mail.

Is there an expiration date on the religious worker classification?

Yes. There is an expiration date on the religious worker classification, which is September 30, 2012. If Congress does not extend that date or make the classification permanent, the classification will expire and religious organizations will no longer be able to file I-360 petitions seeking permanent residency for aliens who are religious workers.

Note: This expiration date only applies to religious workers who are not ministers.

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What evidence can the petitioner provide to demonstrate that the religious organization is a bona fide non-profit organization and that the alien will not be solely dependent on supplemental employment or solicitation of funds for support?

The religious organization must file a currently valid determination letter from the Internal Revenue Service (IRS) showing the tax-exempt status of the petitioning religious organization or group under Internal Revenue Code 501(c)(3).

Affiliated organizations or petitioning organizations that are not classified as religious organizations by the IRS must establish that they are tax-exempt by providing 1) a currently valid determination letter from the IRS establishing that the organization is tax exempt; 2) documentation that demonstrates their religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization, 3) organizational literature, such as books, articles, brochures, calendars or flyers describing the religious purpose and nature of the activities of the organization; and 4) the *Religious Denomination Certification* in the revised Form I-360.

All petitioning organizations must submit evidence of: (1) How the petitioner intends to compensate the worker and (2) past compensation or support to demonstrate the required previous two years of religious work.

What initial requirements or qualifications does an alien who is a religious worker have to meet?

A religious worker must meet the following requirements:

- For at least two years prior to the filing of the petition, have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States; and
- Seeks to enter the U.S. to work full time in one of the following occupations:
 - a) Minister of that religious denomination;
 - b) A religious vocation in either a professional or nonprofessional capacity; or
 - c) A religious occupation in either a professional or nonprofessional capacity,;
- Be coming to work for a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination in the United States; and
- Must have been performing this religious work for the past two years, either abroad or in lawful immigration status in the United States.

What initial evidence should the employer or self-petitioning alien provide?

The bona fide nonprofit religious organization must submit documentary evidence that demonstrates the following:

- That the organization qualifies as a nonprofit organization in the form of:
 - a) A currently valid determination letter from the Internal Revenue Service (IRS) showing the tax exempt status of the petitioning religious organization or group under Internal Revenue Code 501(c)(3).

Affiliated organizations or petitioning organizations that are not classified as religious organizations by the IRS must establish that they are tax-exempt by providing 1) a currently valid determination letter from the IRS establishing that the organization is tax exempt; 2) documentation that demonstrates their religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization, 3) organizational literature, such as books, articles, brochures, calendars or flyers describing the religious purpose and nature of the activities of the organization; and 4) the *Religious Denomination Certification* in the revised Form I-360.

- According to Form I-360 and the instructions to the Form, the petitioning religious organization or self-petitioner must submit an Attestation and evidence as required by the Form and Attestation as follows:
 - a) That the prospective employer is a bona fide non-profit religious organization or a religious organization which is affiliated with the religious denomination and is exempt from taxation;
 - b) The number of members of the prospective employer's organization;
 - c) The number of employees working at the same location where the beneficiary will be employed and a summary of the type of responsibilities for their positions;
 - d) The number of aliens holding religious worker status (both immigrant and nonimmigrant) currently employed or employed within the past 5 years;
 - e) The number of nonimmigrant or immigrant religious worker petitions filed by the prospective employer in the past 5 years;
 - f) Whether the alien or his dependent family members had been admitted in R status in the past 5 years;
 - g) The relationship between the religious organization in the United States the organization abroad of which the alien is a member;
 - h) A description of the prospective employment;
 - i) That the prospective employer is willing and able to provide salaried or non-salaried compensation, at a level such that the alien and his dependents will not become a public charge;
 - j) That the funds to pay the prospective employee's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithes;
 - k) If the position is not a religious vocation, that the prospective employee will not engage in secular employment;
 - l) That the prospective employee will be employed for at least 35 hours per week;
 - m) That immediately prior to the filing of the petition the prospective employee has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work;

Will USCIS be conducting on-site inspections?

Yes. USCIS will be conducting on-site inspections as part of the Administrative Site Visit and Verification Program (ASVVP). The ASVVP is designed to supplement existing DHS and USCIS anti-fraud initiatives. As part of the process, site inspections are conducted to verify that a location of employment exists and to validate information provided on the petition. Inspections may include a tour of the organization's facilities, interviews with organization officials, a review of selected organization records relating to the organization's compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS considers relevant to the integrity of the organization.

Who will be conducting the site visits?

USCIS Immigration Officers and limited contractors will be conducting site visits through the Administrative Site Visit and Verification Program. Site inspectors receive specialized training specific to conducting site visits. These individuals will be operating under the authority delegated to USCIS by the Secretary of Homeland Security to perform functions under U.S. immigration laws, including verifying information associated with applications or petitions.

What specific tasks will the site inspectors perform?

Site inspectors will verify the existence of a petitioning entity, take digital photos, obtain documents, and speak with organizational representatives to confirm the beneficiary's work location, employment workspace, hours, salary, and duties to assist USCIS in determining whether they are in compliance with the terms and conditions stated in the petition.

Is a religious worker filing under this classification eligible to file the *Application to Register Permanent Residence or Adjust Status (I-485)* concurrently with the *Petition for Amerasian, Widow(er), or Special Immigrant (I-360)*?

Due to the court case of Ruiz-Diaz v. United States, certain aliens were temporarily allowed to concurrently file Form I-360 with Form I-485 and/or I-765 from June 11, 2009 to November 7, 2010. USCIS will no longer accept these concurrent filings. . As of November 8, 2010, any I-485 application where the underlying basis is an I-360 petition seeking the classification of special immigrant religious worker must be filed based on an approved I-360 petition. [More information on Ruiz-Diaz v. U.S.](#)

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Can the spouse and unmarried children under 21 of a religious worker gain permanent residency through this category? If so, what and when can they file?

Yes. The spouse and unmarried children under 21 of a religious worker can gain permanent residency based on the principal alien. Dependents may file Form I-485, *Application for Travel Document* (I-131) and *Application for Employment Authorization* (I-765) concurrently or subsequent to the principal alien's filing of Form I-485. To access these Forms, please visit our [website](#) at www.uscis.gov

If dependents file after the principal alien files his or her I-485, dependents must wait until the principal applicant receives a Form I-797, *Notice of Action* from USCIS. Thereafter, dependents must include a copy of the principal applicant's Form I-797 with their filings. The principal's *Notice of Action* will facilitate matching dependent's subsequent filings with the principal's file, thereby reducing the chances of delays in the file routing.

How can the employer or the alien check for visa availability?

The employer or the self-petitioning alien can check for visa availability by accessing the Department of State's, Bureau of Consular Affairs **Visa Bulletin** at: http://www.travel.state.gov/visa/bulletin/bulletin_1360.html

What did the court decide in Ruiz-Diaz v. United States?

The district court decided that the concurrent filing regulations (the filing of Form I-485 together with or subsequent to Form I-360) were invalid with regard to religious workers. The court directed USCIS to accept properly filed Forms I-360, Forms I-485, and Forms I-765 from certain religious workers who may have been denied adjustment of status previously and any new filings. However, the Ninth Circuit Court of Appeals overturned this decision and as of November 8, 2010, USCIS no longer accepted concurrently filed applications with the Form I-360 for religious workers. [More information on Ruiz-Diaz v. U.S.](#)

Who is affected by the court's decision?

Finding that the concurrent filing regulation at 8 CFR 245.2(a)(2)(i)(B) was invalid and unenforceable, the court's decision affects applicants who previously filed Form I-485 for adjustment of status either together with or subsequent to having filed a Form I-360. Applicants who tried to concurrently file Form I-360 and I-485 on or after July 31, 2002, are now permitted to re-file their Forms I-360, I-485, and I-765 with the California Service Center. The district court's order also required USCIS to accept new concurrently and properly filed Form I-360, I-485, and I-765. USCIS stopped accepting concurrently filed applications with the Form I-360 for religious workers as of November 8, 2010 pursuant to the order of the Court of Appeals overturning the district court order.

The information contained here is a basic guide to help you become generally familiar with many of our rules and procedures. Immigration law can be complex, and it is impossible to describe every aspect of every process. After using this guide, the conclusions reached, based on your information, may not take certain factors such as arrests, convictions, deportations, removals or inadmissibility into consideration.

We cannot provide legal advice. If you believe you may have an issue such as any described above, it may be beneficial to consider seeking legal advice from a reputable immigration practitioner such as a licensed attorney or nonprofit agency accredited by the Board of Immigration Appeals before seeking this or any immigration benefit.

For more information about immigration law and regulations, please see our website at www.uscis.gov.

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