




# IMMIGRATION OPTIONS

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# Overview

1. Brief overview of the Immigration System
2. Employment-Based Nonimmigrant Visa Options with a special focus on those that are helpful for engineers
  1. *F-1 (Student)*
  2. *H-1B (Specialty Occupation)*
  3. *L-1 (Intra-Company)*
  4. *O-1 (Exceptional Ability)*
  5. *TN (NAFTA)*
3. Employer Sponsored Green Card Process (i.e. Immigrant Visa/PERM)
4. Discussion of Legal Fees
5. Q&A



# IMMIGRATION OVERVIEW

# Immigration Basics

- Most applications filed and adjudicated by United States Citizenship and Immigration Services (USCIS)
- If Beneficiary abroad, Beneficiary also seeks visa stamp to enter the United States from abroad at consulate
  - *Consulate does not re-adjudicate application but makes admissibility determination*
- Admissibility= whether Beneficiary is worthy of entry in the United States

**THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.**

Beneficiary Number		Case Type													
Beneficial Date		H129 - PETITION FOR A NONIMMIGRANT WORKER													
Priority Date	Petitioner														
Notice Date	Page	Beneficiary													
1 of 1															
c/o LIPING SHI LAW OFFICES OF LIPING SHI PC 36 09 MAIN STREET STE 9B FLUSHING NY 11354		Notice Type: Approval Notice Class: H1B Valid from													
<p>We have mailed an official notice about this case (and any relevant documentation) according to the mailing preferences you chose on Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. This is a courtesy copy, not the official notice.</p> <p><b>What the Official Notice Said</b></p> <p>The above petition and extension of stay have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Changes in employment or training may require you to file a new Form I-129 petition. Since this employment or training authorization stems from the filing of this petition, separate employment or training authorization documentation is not required. The I-94 attached below may contain a grace period of up to 10 days before, and up to 10 days after the petition validity period for the following classifications: CW-1, E-1, E-2, E-3, H-1B, H-2B, H-3, L-1A, L-1B, O-1, O-2, P-1, P-2, P-3, TN-1, and TN-2. H-2A nonimmigrants may contain a grace period of up to one week before and 30 days after the petition validity period. The grace period is a period of authorized stay but does not provide the beneficiary authorization to work beyond the petition validity period. The decision to grant a grace period and the length of the granted grace period is discretionary, final and cannot be contested on motion or appeal. Please contact the IRS with any questions about tax withholding.</p> <p>The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, Arrival-Departure Record. The I-94 portion should be given to the U.S. Customs and Border Protection when he or she leaves the United States. The left part is for his or her records. A person granted an extension of stay who leaves the U.S. must normally obtain a new visa before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-824, Application for Action on an Approved Application or Petition, to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.</p> <p>The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.</p> <p><b>THIS FORM IS NOT A VISA AND MAY NOT BE USED IN PLACE OF A VISA.</b></p> <table border="1"> <tr> <td>Number of workers: 1</td> <td>DOB</td> <td>COR</td> <td>Class</td> <td>Consulate/POE</td> <td>OCC</td> </tr> <tr> <td>Name</td> <td></td> <td>CHINA, PEOPLE'S REPUBLIC OF</td> <td>H1B</td> <td></td> <td></td> </tr> </table> <p>The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at <a href="http://www.sba.gov/ombudsman">www.sba.gov/ombudsman</a> or phone 202-205-2417 or fax 202-481-5719.</p> <p><b>NOTICE:</b> Although this application or petition has been approved, USCIS and the U.S. Department of Homeland Security reserve the right to verify this information before and/or after making a decision on your case so we can ensure that you have complied with applicable laws, rules, regulations, and other legal authorities. We may review public information and records, contact others by mail, the internet or phone, conduct site inspections of businesses and residences, or use other methods of verification. We will use the information obtained to determine whether you are eligible for the benefit you seek. If we find any derogatory information, we will follow the law in determining whether to provide you (and the legal representative listed on your Form G-28, if you submitted one) an opportunity to address that information before we make a formal decision on your case or start proceedings.</p> <p>Please see the additional information on the back. You will be notified separately about any other cases you filed.</p> <p>Nebraska Service Center U. S. CITIZENSHIP &amp; IMMIGRATION SVC P.O. Box 82521 Lincoln NE 68501-2521 USCIS Contact Center: <a href="http://www.uscis.gov/contactcenter">www.uscis.gov/contactcenter</a></p>				Number of workers: 1	DOB	COR	Class	Consulate/POE	OCC	Name		CHINA, PEOPLE'S REPUBLIC OF	H1B		
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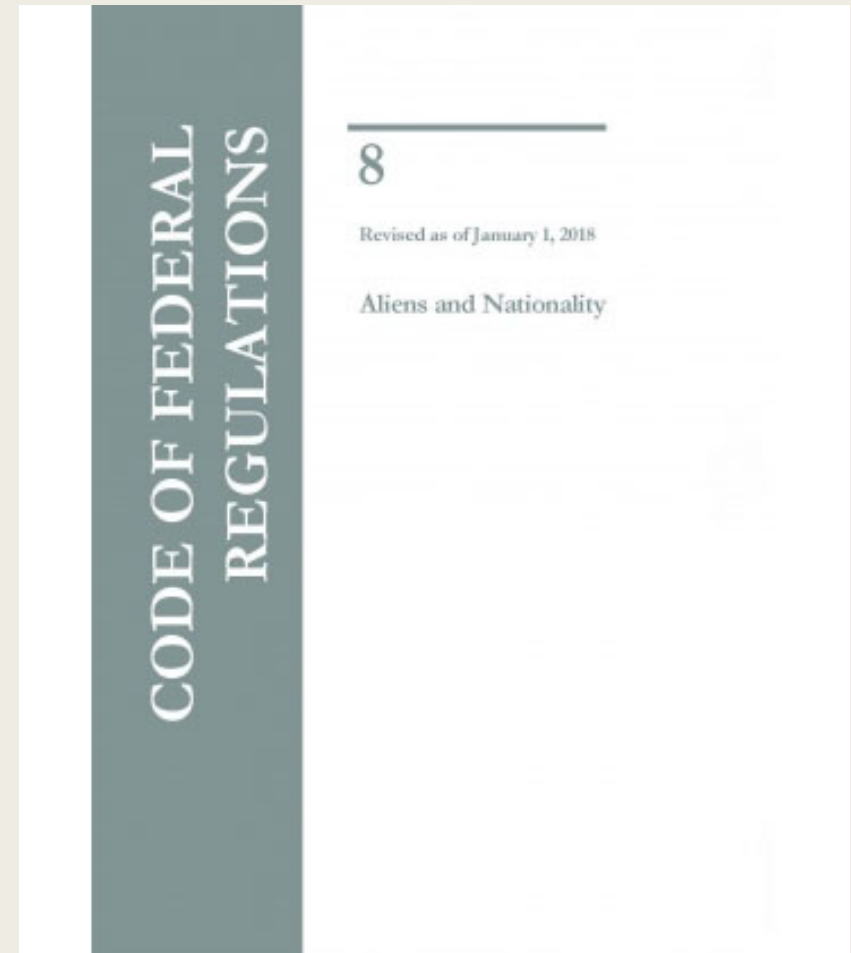
# Difference Between Visa and Status

- USCIS approval confers status
  - *Status kick starts at the time of approval or Beneficiary entry in the U.S.*
- Visa is given pursuant to status obtained via USCIS
- Visa are only needed by foreign nationals who need to enter the United States from abroad
- Someone who remains in the United States, with no plans to internationally travel, does not need a visa
- Everyone has a status, but not everyone needs a visa!



# Immigration Authority

- Authority and requirements for most visas granted through Immigration and Nationality Act (INA), various treaties, or Code of Federal Regulations (CFR)
- Every visa and its requirements are defined in at least one of these sources
  - *Very broad*
  - *Officers afforded discretion*



# Nonimmigrant v. Immigrant Visas

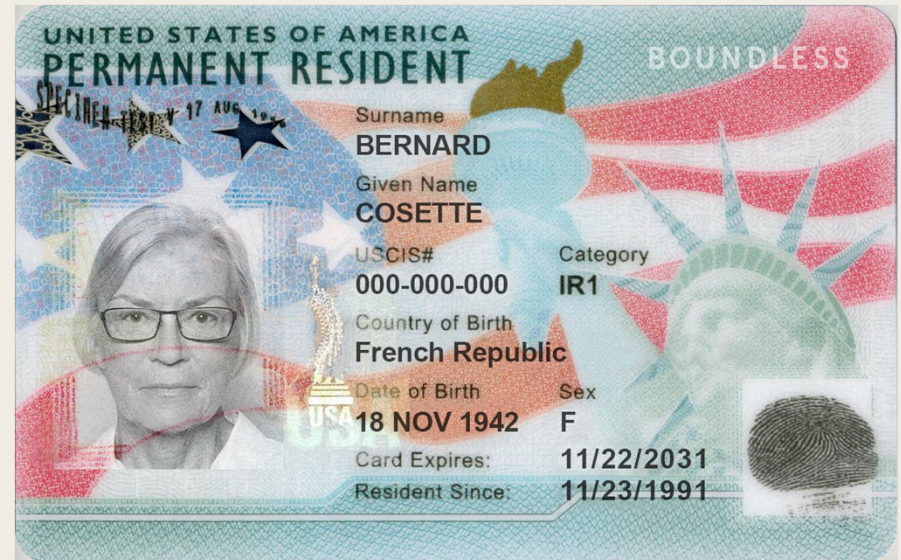
- Nonimmigrant visas grant temporary work authorization and ability to reside in the United States
  - *Frequently must show nonimmigrant intent (intent to temporarily remain) to be approved*
  - *Some nonimmigrant employment-based visas allow for dual intent*
  - *Dual intent= allows individual to enter as a nonimmigrant but able to apply for a green card during stay*

## Non-Immigrant Visas

1. F-1 (Student)
2. H-1B (Specialty Occupation)
3. L-1 (Intra-Company)
4. O-1 (Exceptional Ability)
5. TN (NAFTA)

# Nonimmigrant v. Immigrant Visas

- Immigrant visas grant permanent ability to work and reside in the United States
  - *Legal Permanent Residence or Green Card*
  - *Family and Employment-Based Petition Options*
  - *For our discussion: PERM*





# Nonimmigrant v. Immigrant Visas

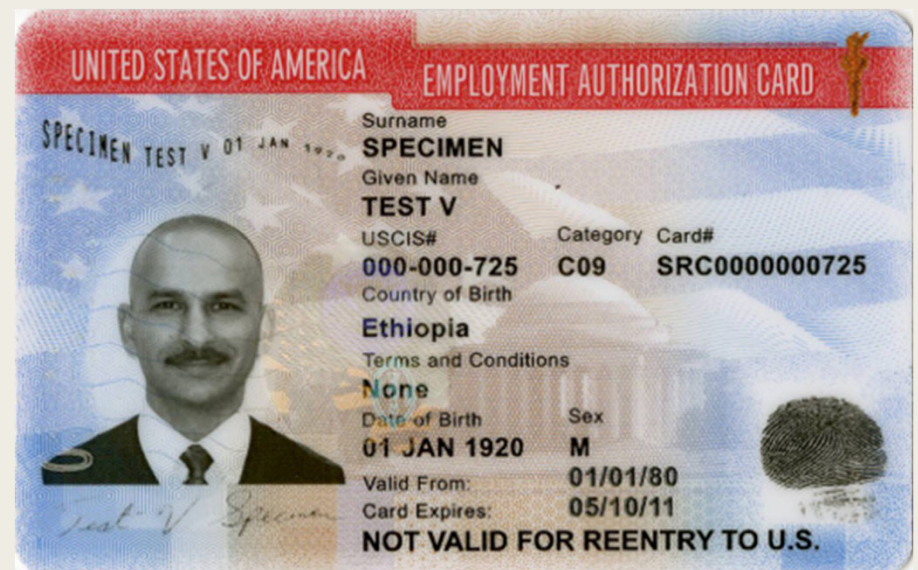
Non-Immigrants	Immigrants
<ol style="list-style-type: none"><li>1. <u>Temporarily</u> live in the United States for a <u>pre-approved</u> purpose, such as working or studying<ul style="list-style-type: none"><li>• Changes must be reported and pre-approved</li></ul></li><li>2. May obtain a driver's license and a social security card.</li></ol>	<ol style="list-style-type: none"><li>1. <u>Permanently</u> reside in the United States</li><li>2. <u>Permanently</u> work or study in the United States, without restriction</li><li>3. Eligible for driver's license and social security card</li><li>4. Eventually apply for United States citizenship</li></ol>



# NONIMMIGRANT VISAS

# F-1 Student Visas

- Two forms of Optional Practical Training (OPT) provided after student receives a degree
- 1. Post-Completion OPT
  - *1 year of work authorization in field related to degree*
- 2. STEM OPT
  - *Additional 2 years of work authorization for STEM degrees*
  - *Engineering degrees included*
- Both forms of work authorization
  - *Require full-time work*
  - *Authorized by foreign student advisor at university*
  - *USCIS issues work authorization card*



# H-1B Visa

- H-1B allows employers to employ foreign nationals in “specialty occupations”
- “Specialty Occupation” = one that requires at least a Bachelor’s degree to perform
- Typical occupations include: accountant, lawyer, doctor, and engineers
- Approvals are for 3 years
- Similar treaty based visas:
  - *H-1B1 for Chile and Singapore nationals*
  - *E-3 for Australian nationals*

# H-1B Pros

- Traditional transition visa for students
- Low evidentiary burden- only must show Bachelor's degree is minimum requirement and Beneficiary has obtained a Bachelor's degree or foreign equivalent
- Minimal paperwork:
  - *Labor Condition Application filed with the Department of Labor*
  - *H-1B Application filed with USCIS*
- Dual intent- H-1B worker can apply for a green card to remain in the United States

# H-1B Cons

- Only 65,000 visas made available each year
  - *Additional 20,000 made available for those with Master's degree or higher (i.e. Master's Cap)*
- Must be selected in annual lottery (March)
  - *274,237 applications for fiscal year 2022 (March 2021)*
  - *Exception for H-1B1 and E-3 Treaty Based Visas*
- Baseline filing fees are high
  - *Initial application- \$1,710 - \$2,460 depending on the size of the company*
  - *Additional \$2,500 fee for premium processing*
- 6-year maximum stay

# L-1 Intra-Company Transferee

- Allows U.S. employer to transfer an executive or manager, or worker with specialized knowledge from one of its affiliated foreign offices
- L-1A- must show worker will serve in an executive or managerial position in the United States
- L-1B- must show worker will serve in a position that requires specialized knowledge relating to organization's interests
  - *Ex. company products or software*
- Beneficiary must prove employment for at least one year overseas in a “qualifying organization”
  - *Qualifying organization= parent company, branch, subsidiary, or affiliate company*
- Approvals for 3 years

# L-1 Pros

- No cap on the number of visas that can be granted per year
- Filing fees lower than H-1B: \$960
  - *Premium processing available for additional \$2,500 fee*
- Dual intent- L-1 can apply for green card to remain in United States



# L-1 Cons

- Must already be employed/ Requires one year of employment abroad
- Requirements may be difficult for student
- 7-year maximum stay for L-1A
- 5-year maximum stay for L-1B

## O-1- Individuals with Extraordinary Ability or Achievement

- For workers who possess extraordinary ability in sciences, arts, education, business, or athletics
- Approvals for 3 years

# O-1- Individuals with Extraordinary Ability or Achievement

- Must have a Nobel Prize or meet three of the following:
  - *Receipt of lesser nationally and internationally **recognized prizes** or awards;*
  - *Membership in associations in the field which **require outstanding achievements** of their members;*
  - ***Published materials** about the individual in professional or major trade publications or other major media;*
  - *Participation as a judge of the work of others in the field;*
  - ***Original scientific, scholarly, artistic, athletic or business-related contributions** of major significance;*
  - *Authorship of published **scholarly articles** in the field;*
  - ***Serving in a critical or essential capacity** for petitioner that has a distinguished reputation; and/or*
  - ***Commanding a high salary** or other significantly high remuneration for services.*

# O-1 Pros

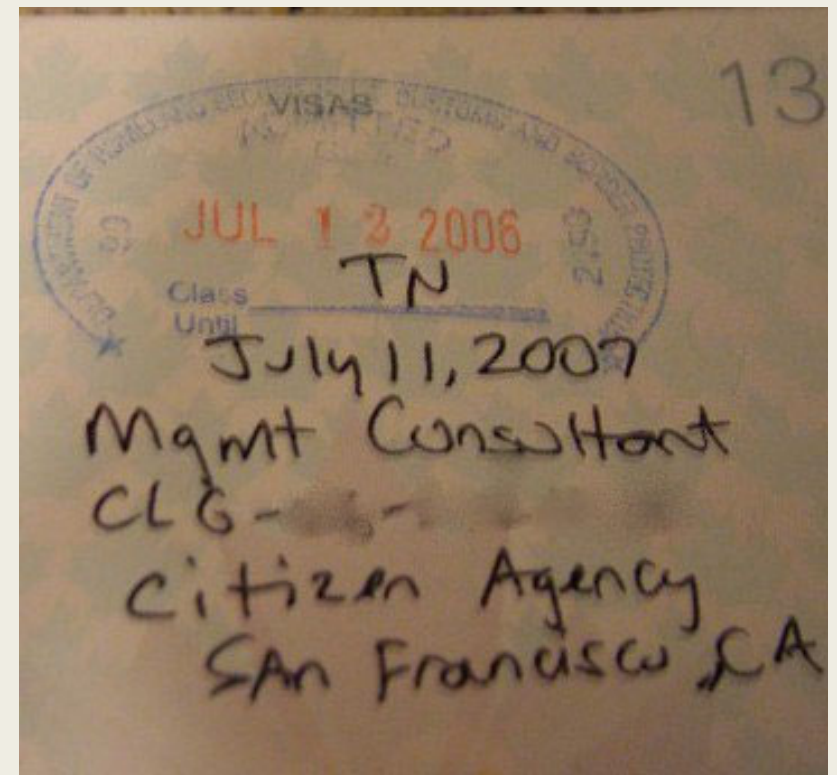
- Low fee- \$460
  - *Premium processing available*
- No annual cap
- No max stay, as long as Beneficiary continually meets requirements

# O-1 Cons

- Very high evidentiary burden
  - *Plentiful documentation required*
- Only top in their field
  - *Students unlikely to qualify*
- No dual intent- cannot have a pending green card process at a time of renewal

# TN Visa- NAFTA Professional

- Allows citizens of Canada and Mexico to work in the United States in pre-arranged business activities for foreign or U.S. employers
- Authority provided pursuant to NAFTA (now USMCA)
- Must have a job offer in a “qualifying profession” under the regulations
  - *Found at 8 CFR 214.6*
  - *Engineer included*
- At least a Bachelor’s degree required
- Approvals for three years



# TN Visa Pros

- Canadians afforded special treatment
  - *Can avoid applications via USCIS:*
  - *Initial and renewal applications accepted at port of entry with CBP*
  - *Mexican nationals must apply at consulate*
- Inexpensive
  - *\$56 if applying at port of entry*
  - *\$160 if applying with consulate abroad*
- No annual cap

# TN Visa Cons

- Only for Canadian and Mexican nationals
- Must fit within list contained at 8 CFR 214.6
- Applicant must show he/she has at least a Bachelor's degree in field related to an occupation
  - *i.e. Applicant cannot apply for entry as an Engineer if he/she only has a degree in History*



## Non-Immigrant Visas: A Comparison

	Filing Fees	Capacity	Timing	Education	Restrictions
F-1 (Student)	\$410 for EAD	Unlimited	1 Year (+ optional 2)	Bachelors	Temporary
H-1B (Specialty Occupation)	\$1,710 or \$2,460	65,000/20,000	3 Years	Bachelors	Max 6 Years
L-1 (Intra-Company)	\$960	Unlimied	3 Years	Typically Bachelors	Max 5 or 7 Years
O-1 (Exceptional Ability)	\$460	Unlimited	3 Years (Unlimited Extensions)	No Requirement	No Dual Intent
TN (NAFTA)	\$56 or \$160	Unlimited	3 Years (Unlimited Extensions)	Bachelors	No Dual Intent



# IMMIGRANT VISA

# Green Card Process (PERM)

- PERM= permanent
- Employer sponsored program
- Consists of 5 steps
- PERM process is meant to protect U.S. workers
- Employer must show:
  - 1. *They will pay at least the prevailing wage (or minimum wage) to the foreign worker*
  - 2. *Foreign worker is not taking a job that a U.S. worker is qualified and willing to take*
  - 3. *Foreign worker meets all the minimum educational and experiential requirements of the position*
- For anyone- regardless if position is professional

# Green Card: Step 1 - Prevailing Wage Determination

- Submitted to the Department of Labor (DOL)
- No fee
- Application consists of description of day-to-day job duties, minimum educational and experiential requirements, factors that affect pay (i.e. supervisory duties or required travel)
  - *There are restrictions that are atypical from traditional recruitment/promotion practices in an effort to protect U.S. workers*
- DOL certifies (or adjudicates) form and returns back to us with a minimum wage based on the above

# Green Card: Step 2 - Recruitment

- Perform a test of labor market by posting job ads for the position
  - *Local newspapers, state job bank, employer's website, job recruitment websites (i.e. Monster, Indeed, etc.)*
- Any responding candidates with basic qualifications are interviewed
- Determine if any candidates are qualified and interested in position
- If qualified and interested U.S. worker applies, PERM process must stop as the foreign worker will be taking position from a U.S. worker

# Green Card: Step 3 - Labor Certification

- If no qualified and interested U.S. workers are found, Application for Labor Certification is filed with the DOL
- No fee
- Application is lengthy– details: (1) job offered, including job duties and minimum qualifications; (2) recruitment (i.e. dates and where ads posted); (3) beneficiary, including current employment and qualifications
- Employer must keep a recruitment report on file, which consists of proof of advertising; list of candidates who applied and why they were not qualified or interested; resumes of candidates; and interview notes
  - *DOL may audit the Labor Certification and request the recruitment report and accompanying documentation*
- DOL takes 6 months to adjudicate Labor Certification (longer if audit is made)

# Green Card: Step 4 - Immigrant Visa Application

- Application filed with USCIS
- Fee of \$700
  - *Additional premium processing option of \$2,500*
- Include certified Labor Certification as proof that employer met all recruitment/prevailing wage minimum requirements.
- At this stage, USCIS determines whether employer can pay offered wage to the Beneficiary and Beneficiary meets minimum requirements of the offered position
  - *Submit diplomas, transcripts, educational evaluations, letters confirming prior employment or skills obtained*
  - *Taxes or financial documents of employer to prove ability to pay*

# Green Card: Step 5 - Adjustment of Status/Consular Processing

- If Immigrant Visa Petition is approved, employee may apply for green card
  - *Adjustment of Status filed at USCIS, if employee currently in U.S. in nonimmigrant status*
    - \$1,225 fee
  - *Consulate, if employee currently abroad*
    - \$445
- At this stage, admissibility is determined (i.e. whether employee qualifies for a green card)
- Takes into account various factors:
  - *Criminal concerns?*
  - *Prior immigration violations (overstaying a visa, improper use of a visa)?*
    - Proof of prior status and maintenance of that status
  - *Past or current membership in terrorist or communist organizations?*



# Green Card: Step 5 - Adjustment of Status/Consular Processing

- Some employees are able to apply for green card concurrently with Immigrant Visa Petition, others need to wait
- Quota on the number of immigrant visas given per country, per year, per employment-based preference category
  - *Each country has a certain number of immigrant visas to give out each year in each employment-based preference category*
  - *Employee charged to country of birth*
- 4 employment-based preference category
  - *1<sup>st</sup> is the best down to 4<sup>th</sup>, which is least preferable*
    - More visas given in 1<sup>st</sup> preference, down to lower amounts given in subsequent categories
  - *Determined by minimum requirements of offered position (typically most fall in 2<sup>nd</sup> or 3<sup>rd</sup>)*

# Green Card: Step 5 - Adjustment of Status/Consular Processing

- Visa bulletin tracks who is currently eligible to apply for an immigrant visa
- Everyone assigned a priority date
  - *Date Labor Certification filed*
  - *Used to track whether someone is eligible to apply for immigrant visa*
- Someone who is eligible to apply for an immigrant visa because their priority date is prior or at date listed on visa bulletin

# Visa Bulletin

## NOVEMBER 2021 VISA BULLETIN

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	15NOV18	C	01DEC11	C	C
3rd	C	22MAR18	C	15JAN12	C	C
Other Workers	C	01MAR10	C	15JAN12	C	C
4th	C	C	15MAR19	C	01APR20	C
Certain Religious Workers	C	C	15MAR19	C	01APR20	C
5th Non-Regional Center (C5 and T5)	C	22NOV15	C	C	C	C
5th Regional Center (I5 and R5)	U	U	U	U	U	U

# Legal Fees

- Employer is responsible for filing fees and any legal costs (including costs of an attorney)- these cannot be transferred to the foreign national in any way
- Not possible to provide an estimate of legal fees
- Some relevant factors:
  - *More documentation = higher cost (i.e. O-1 will cost more than an H-1B)*
  - *More time/attorney resources= higher cost (PERMs will cost more than nonimmigrant visas)*
  - *Initial applications for status will cost more than extensions*
  - *Time of year may impact fees (i.e. H-1B caps may cost more because filed during cap season)*

# Questions?

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