

IMMIGRANT VISA PREFERENCE CATEGORY SYSTEM

In order to obtain permanent residence (i.e. a “green card”) in the United States, an individual must first be awarded an immigrant visa number. Currently, immigration law allots 140,000 immigrant visas to individuals who wish to immigrate to the U.S. via employment, and 226,000 immigrant visas to individuals who wish to immigrate to the U.S. via family. The Family Preference System controls the allocation of immigrant visas in the family-based context (see [Family-Based Immigration](#)), and the Employment Preference System controls the allocation of immigrant visas in the employment-based context. The visas are separated into preference categories, based upon the type of employment offered.

Because there are a limited number of employment-based visas available in each category, there are at times backlogs for beneficiaries of employment-based petitions which create delays in the availability of immigrant visas. To determine whether there is a delay (a.k.a. retrogression) in the availability of an immigrant visa in a particular employment-based category, refer to the U.S. State Department’s monthly [Visa Bulletin](#) which provides information about the availability of immigrant visas in each employment-based and family-based preference category. The visa bulletin indicates that a preference category is either “current,” meaning there is no backlog, “unavailable,” meaning there are no visas currently available for that category, or provides a cutoff date (a.k.a. “priority date”) by which an immigrant visa petition or labor certification must have been filed in order for an immigrant visa to be available to the individual.

Individuals whose priority date is not yet current are eligible to begin the permanent residence process by filing Form I-140, Immigrant Visa Petition (either as the beneficiary of an employment-based petition or via self-petition) with U.S. Citizenship & Immigration Services (USCIS). However, the next step of the process, either filing Form I-485, Application to Adjust Status to Permanent Residence with USCIS or applying for permanent residence at a U.S. Consulate abroad, cannot commence until the Visa Bulletin indicates that the individual’s priority date is current on the “Eligible for Filing” chart. The permanent residence application cannot be approved until the individual’s priority date is current on the “Final Action” chart.

Employment-based visas are divided among the following categories:

First Preference (EB-1)
<p>May be issued to the following types of priority workers without going through the labor certification process:</p> <ul style="list-style-type: none">• Individuals who possess extraordinary ability in the sciences, arts, education, business or athletics;• Individuals who qualify as outstanding professors and researchers; and• Certain multinational executives and managers. <p>Priority date is assigned based on the date of filing of the I-140 petition.</p>

Second Preference (EB-2)

May be issued to individuals who are members of the professions holding advanced degrees or persons of exceptional ability. An advanced degree is defined as at least a Master's degree or a Bachelor's degree and 5 years of progressive experience. Individuals in this category may seek an exemption (known as a waiver) from the requirement of a job offer, and thus a labor certification, by demonstrating that their admission is in the national interest.

Priority date is assigned based on the date of filing of the PERM labor certification application, or the date of filing of the I-140 petition where no labor certification is required.

Third Preference (EB-3)

May be issued to professionals, skilled workers, and other workers.

- Professionals must possess a baccalaureate or foreign equivalent degree, and the petitioner must demonstrate that such a degree is the normal requirement for entry into the profession.
- Skilled workers must be capable of performing skilled labor requiring at least two years of training or experience.
- The other workers category covers workers who are capable of performing unskilled labor and who are not temporary or seasonal. Relevant positions require less than 2 years of experience and do not require a post-secondary degree. No more than 10,000 visas per year can be distributed to *other workers*.

Priority date is assigned based on the date of filing of the PERM labor certification application.

Fourth Preference (EB-4)

May be issued to certain special immigrants, such as ministers or religious workers.

Priority date is assigned based on the date of filing of the I-360 petition.

Fifth Preference (EB-5)

May be issued to individuals who invest at least \$1.8 million dollars in a job-creating enterprise in the U.S. (\$900,000 in certain circumstances). At least 10 U.S. workers must be employed by each investor. The amount of money can vary depending on which area of the country will benefit from the investment. The initial grant of permanent residence will be conditional. If the investor fails to meet the conditions specified in the grant of permanent residence after the first two years, he or she can lose the permanent resident status.

Priority date is assigned based on the date of filing of the I-526 petition.