

HAUSWIESNER KING LLP

Employment-based Immigrant Visas – Q&A

What is an employment-based immigrant visa?

An employment-based immigrant visa allows an employee to permanently stay and work in the United States. It is initiated by an American employer who sponsors the Greencard of the employee.

Do I qualify for an employment-based immigrant visa?

There are three main categories to qualify for an employment-based visa:

The first category (EB-1) includes persons of extraordinary ability in the sciences, arts, education, business or athletics, outstanding professors and researchers and multinational executives and managers.

The second category (EB-2) encompasses members of the professions holding advanced degrees or persons of exceptional ability in science and art. This requires that the offered position require at least a bachelor's degree. Advanced degree means that the foreign national must have a Master's Degree.

The third category (EB-3) applies for professionals, skilled workers and other workers and is used in the majority of all cases. The foreign national must have at least a Bachelor's degree and the job requires at least a Bachelor's Degree.

What is the process?

For most EB-2 and EB-3 cases, the first step is to obtain a labor certification from the U.S. Department of Labor. In the labor certification, the DOL certifies that there are not sufficient American workers who are able, willing, qualified and available in the geographic area where the national is to perform the work. This is a very complex task and requires an active involvement from the immigration lawyer.

In case the DOL approves the case, the law firm files the immigrant petition with the USCIS. This petition requires that the employer is able to pay the offered salary. This means that the employer must submit a federal tax return, audited financial statements or an Annual Report.

How long will the petition process take?

The Labor Certification process alone usually takes a couple months. It is not uncommon for whole process to take one year or longer. The process goes faster for multinational executives and managers because labor certification is not required.

Because Congress limits the number of employment-based green cards issued each year to 140,000, the number of applicants exceeds the supply, resulting in significant backlogs in some employment-based categories. There is also a quota for certain countries resulting in longer backlogs for their citizens. The waiting time to obtain a visa number depends on the immigration category the employee is in. For example, the waiting time for an EB-3 worker is more than five years.

What if the employee is currently in the United States?

In case the foreign worker is in the United States on a non-immigrant visa, he can file for adjustment of status. However, the foreign worker has to make sure that he maintains his visa status during the time of the Labor Certification and the petition process because the filing of the petition does not authorize the alien to stay nor to work.

What are the filing fees?

The immigrant petition costs \$475. There is no fee for the labor certification.

In case the foreign worker is in the United States on a non-immigrant visa, he has to file for adjustment of status which costs \$1,010 for filing and biometrics services.

There is an additional fee of \$1,000 for Premium Processing which means that the petition will be processed within 15 business days.

What are the main challenges to obtain an employment-based green card?

There are two main challenges:

The first is to obtain the labor certification. As a rule of thumb, the Department of Labor only approves half of all cases.

The second challenge is to qualify for an immigrant category where there is no or at least a short waiting time to obtain a current visa number.