



FAQ's

Permanent Residence Through Employment

The following questions and answers are very general in nature. You are strongly cautioned not to rely on any of these answers as legal advice. All situations involve different facts which may lead to a different legal conclusion. The following information is submitted solely for discussion purposes and is not intended as legal advice and should not be relied on for that purpose.

Obtaining Permanent Residence Through Employment

1. How do I determine if I qualify for a national interest waiver or as an outstanding researcher?

Each case must be analyzed on its own facts. The Immigration Service is becoming increasingly restrictive in both on these categories. National interest waiver requires the determination of your contribution to a field which will prospectively benefit the entire country.

The outstanding researcher category requires at least a graduate degree in a research field with three years of experience. It also requires a job offer from an employer which has an established research department. You must also establish that your accomplishments within your research field have been recognized on an objective basis. Letters of recommendations from college professors are generally not sufficient for this purpose.

2. When can I start my labor certification application?

A labor certification case can be started whenever you receive a job offer from an employer. However, it is not recommended that you initiate a labor certification for a job which does not require at least a bachelor's degree and some experience. Most labor certification applications are based on jobs which require degrees, at least some experience and special qualifications.

3. How long does the permanent residence process take?

Depending on the category, the normal process is four to five years. Employment-based first preference cases and national interest waivers usually take approximately one to two years to complete. The time-frame also depends on the quota backlog for that category (if there is one) and the country of birth for the applicant and spouse.

4. What are the steps required to obtain permanent residence through employment?

Generally, there are three steps. The first is referred to as a labor certification application; the second step is a petition filed with the Immigration Service; and the third and final step is generally an adjustment of status application with the Immigration Service. The last step can also be processed through an American Consulate in your country. Some categories, such as the national interest waiver and the outstanding researcher, do not require a labor certification application. So, the case starts with the second step.

5. Can I travel while I am pursuing permanent residence?

Yes. During the labor certification application and petition stages, you are allowed to travel on your H-1B visa. Please note that travel in any classification other than H-1B and L-1 may cause problems upon your return or at an American Consulate if you attempt to obtain a nonimmigrant visa.