

# IMMIGRATION NEWS

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## GREEN CARDS

### MOVING UP: EB-3 to EB-2

There are four steps in the Green Card process:  
1)Labor certification; 2)Immigrant petition (I-140);  
3)Adjustment of Status; and 4)Interview.

The Department of Labor (DOL) adjudicates labor certifications while the Immigration and Naturalization Service (INS) is responsible for the remaining three steps. EB-2 or EB-3 status is determined by a number of factors: Factor One: Labor Certification, when the DOL "codes" the job based on job title, job description, and education required by the employer for the position. Factor Two: Whether the employer requires an advanced degree for the position in Part A. Factor Three: INS determines whether the alien filing for status is an EB-2 or EB-3 based on the "code" assigned by the DOL.

To achieve EB-2 status INS regulations require an advanced degree (a master's degree) or equivalent. The definition of "equivalent" under the INS regulations is a bachelor's degree plus five years experience. Experience gained working for your sponsoring employer does not qualify as the equivalent experience for the advanced degree. Only prior experience may be used to qualify.

**NOTE:** US Consulates in India and Pakistan have computerized lists of graduates from universities in India and Pakistan. When an individual goes to the American Consulate to pick up his H-1B visa, his name will be placed into the computer to be sure that he is a graduate of the university stated in his H-1B application.

## H-1B UPDATE

*How it affects you*

It is expected that the H-1B cap for 1999 may be reached in June. INS is expected to follow the procedure from the past and approve H-1B Petitions received after the cap is reached giving an October 1 start date. The United States Government has an October 1 to October 1 fiscal year. Therefore, the new H-1B numbers will be available on October 1. It is advisable to continue to file H-1B Petitions because those filed will be given numbers and start dates immediately. If you wait until September to file, then it may take longer to receive approvals.

**TIME LINES:** If you are applying for an H-1B extension, be sure to start processing the extension at least 60 days before your H-1B expires. If you live in California and plan to file in the Western INS office, it is advisable to file your Petition at least 90 days before your H-1B expires. Once your H-1B expires, you are expected to leave the USA within 30 days. **Don't risk your status.**

## PROCESSING TIMES

The processing times differ depending upon where in the USA the Petition is being reviewed. Processing times change depending upon the time of year, what kind of work the particular agency is focusing on, and whether there is a back load of work to be processed.

### VERMONT INS

H-1B:	New :	30-60 days
	Extensions:	2-4 weeks
I-140 Immigrant Petitions:		60-180 days
Spouse H-4:		30-60 days
Adjustment I-485:		180-360 days

### Boston DOL:

RIR Labor Certification:	4-6 months
Regular Labor Certification:	6-8 months

**NOTE:** This newsletter is meant for your information. The contents may not be used as legal advice or relied upon as legal advice. The INS and DOL have complex and confusing rules. It is advisable to consult with an Immigration specialist to determine how the rules apply to your particular case.

## Marriage

If you are planning on getting married to another foreign national and you are in the process of applying for a Green Card, it is recommended that you get married before you begin the Adjustment phase of your green card. If you marry before the Adjustment phase your spouse may be added to the Adjustment petition and will qualify for a Green Card.

## Applying for a Green Card with an Expired Visa

If you are in the United States and your visa has expired, applying for a Green Card is still possible. The process is the same as applying while holding a valid visa, but the applicant **may not leave the United States** until you receive the Green Card. If the applicant leaves the country he or she will be barred from re-entering the United States again for up to ten years, so it is very important to remain in the U.S. until the application process is completed.

## Priority Dates

1. If an employer has applied for and received an approved Labor Certification in an EB-3 category for an employee, then applies for an EB-2 category, the employee may use the earlier Priority Date when applying for the I-140 Immigrant Petition and Adjustment.
2. If a foreign national from a country (India or China) that has a backlog happens to be married to another foreign national who is a citizen of a country without a backlog, then he is entitled to use his spouse's nationality when Adjusting his Petition and may evade the backlog from his country.

### PHILADELPHIA DOL:

RIR Labor Certification:	4 months
Regular Labor Certification:	10 months

### MARYLAND DOL:

RIR Labor Certification:	5 months
Regular Labor Certification:	10 months

### VIRGINIA DOL:

RIR Labor Certification:	3 months
Regular Labor Certification:	10 months

## TRADE NAFTA (TN)

Canadians and Mexicans working in the United States may want to consider applying for TN status to work in this country. Trade NAFTA covers sixty-three professions, many of which are covered by the H1-B, but it also covers individuals the H1-B does not cover, including those without a bachelor's degree. Two professional categories the TN does not cover are marketing and some management jobs. Individuals working in those professions will have to stick to the H1-B. A TN visa is a good for those not wishing to apply for an immigrant visa because TNs must prove nonimmigrant intent. A TN may run into difficulty when trying to come into the United States or extending their time in this country if they have applied for an immigrant visa while on the TN.

Canadians have no limit on the number of Trade NAFTAs issued to them, but Mexicans have a fixed rate of 5500 per year. A TN is valid for one year and may be renewed each year without a limit on the number of years it may be renewed.

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