

Employment Based Immigration 101

August 21, 2025

Fredrikson

The logo for Fredrikson, featuring the name in a bold, black, sans-serif font. A red graphic element, consisting of a series of parallel diagonal lines, is positioned below the 'F' and extends towards the 'r'.

Agenda

- Immigration Concepts and Terminologies
- Nonimmigrant Visa Options
- “Green Card” Options
- I-9 Basics & Compliance

Immigration Concepts and Terminologies

Why Is Visa Sponsorship Required

- I-9 Employment Eligibility Verification – all new hires must complete Form I-9 to establish employment eligibility in the U.S. and his/her identity
- Unless United States citizen/national or lawful permanent resident, must possess employment authorization from USCIS and/or sponsoring entity

How to Determine Whether a Candidate Requires Visa Sponsorship

- Permissible questions:
 - Are you currently legally authorized to work for any U.S. employer?
 - Will you now or in the future require work visa/status sponsorship?
- Office of Special Counsel Guidance:
 - Q. May an employer ask applicants for employment what their immigration status is?
 - A. It is not advisable to ask job applicants about their specific status because an unsuccessful applicant may believe that he or she was not hired based on his or her citizenship or immigration status. However, employers may ask whether an applicant is currently authorized to work in the United States or will require sponsorship for employment. Under the anti-discrimination provision, nonimmigrant visa holders may not claim a violation of the law for failure to hire based on their need for sponsorship.

How to Determine Whether a Candidate Requires Visa Sponsorship

- Visa sponsorship question(s) must be posed consistently to ALL candidates – comply with all anti-discrimination laws
- Nonimmigrant fast facts
 - Various types of nonimmigrant status
 - Many require employer sponsorship

Immigration Terminology

- Immigrant vs. Nonimmigrant
- Visa vs. Nonimmigrant Status
- I-94 Electronic Record/Card
- Nonimmigrant Employment Status:
H-1B, TN, H-3, F-1, J-1, O-1, L-1




Departure Number 1 2 3 4 5 6 7 8 9 0 1		[Stamped at Port of Entry]	
Immigration and Naturalization Service		ADMITTED (Port of Entry) (DATE)	
I-94 Departure Record		Class F-1 Until D/S	
14. Family Name			
15. First (Given) Name		16. Birth Date (Day/Mo/Yr)	
17. Country of Citizenship			

Government Agencies Involved

- Department of Homeland Security
 - **US Citizenship & Immigration Services (USCIS)** – Services and benefits (family and employment); naturalization; special status programs
 - **US Immigration & Customs Enforcement (ICE)** – Interior investigations and enforcement, including SEVIS enforcement; smuggling; document fraud; raids
 - **US Customs & Border Protection (CBP)** – Inspections at ports of entry; Customs functions; border patrol
- Department of State – Issues visas to enter the US
- Department of Labor – PERM Labor Certification and H-1B Labor Condition Application (LCA)



I-94 Arrival/Departure Record



DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

OMB No. 1651-0111

Departure Record

Admission Number
904 274431 26

904 274431 26

18. Family Name

19. First (Given) Name

20. Birth Date (DD/MM/YY)

21. Country of Citizenship
CHN

ADMITTED
AUG 12 2012
J1
D/S



U.S. Customs and Border Protection
Securing America's Borders

Get I-94 Number I-94 FAQ

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 69001333663

Admit Until Date (MM/DD/YYYY): 08/24/2013

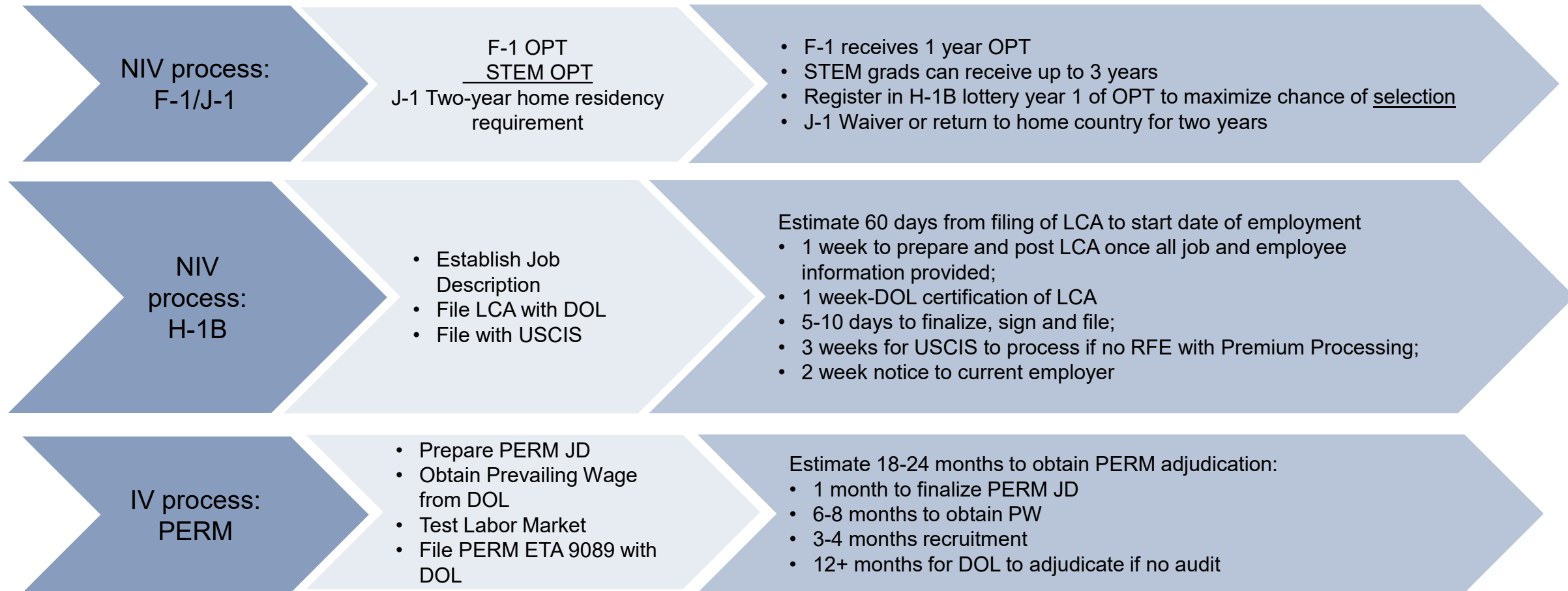
Details provided on Admission (I-94) form:

Family Name:	Testing
First (Given) Name:	Monday
Birth Date (MM/DD/YYYY):	05/06/1985
Passport Number:	123000456
Passport Country of Issuance:	Mexico
Date of Entry (MM/DD/YYYY):	03/13/2013
Class of Admission:	B1

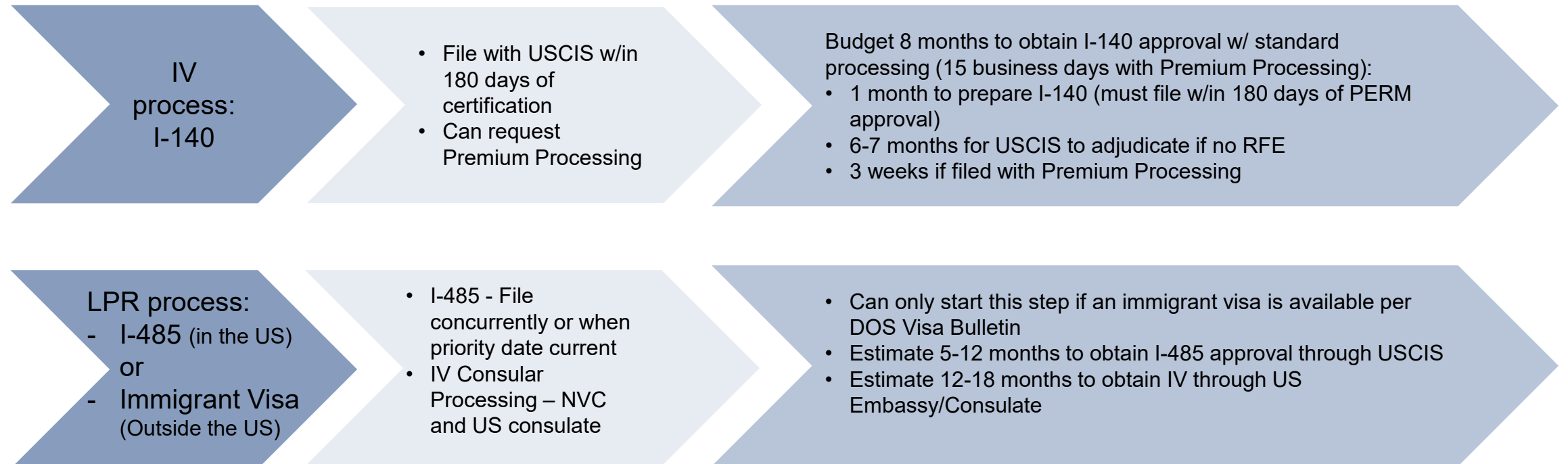
- The I-94 controls status and permissible period of stay in the U.S.
- CBP will only issue electronic I-94s for air and sea travel, although paper I-94s are still being issued at land border Port of Entry.
- Passport or travel documents will be stamped with admission date, visa class and expiration date.
- I-94 records are available on CBP's website: <https://i94.cbp.dhs.gov/home>
- Check I-94 record upon each entry into U.S.

The Lifecycle of a Foreign National's Immigration Journey

The Lifecycle of an Immigration Case: NIV to Lawful Permanent Resident Status



NIV to Lawful Permanent Resident Status Continues...



Nonimmigrant Visa Options

Elements to an Immigration Strategy

- **Organization Goals**

- Organizational policies & structure
- Position: requirements and duties
- Timing: start date and long-term retention

- **Employee Goals**

- Prior immigration history & nationality
- Long term immigration goals
- Familial considerations

Common Nonimmigrant Employment Options

Visa Type	Employer Sponsorship
F-1 Student on CPT, OPT, and STEM OPT	CPT and OPT – No, but requires permission from USCIS or University STEM OPT – require employer sponsored training plan.
H-1B, H-1B1, E-3 Specialty Occupation	Yes – Employer Specific
L-1 Intra Company Transferee (Manager, Executive, Specialized Knowledge)	Yes – Employer Specific
H-2 Temporary agricultural and non-agricultural workers	Yes – Employer Specific
O-1 Scientists, researchers, and business executives of extraordinary ability	Yes – Employer Specific
H-3 or J-1 Trainee	H-3 – requires employer sponsorship J-1 – requires J program sponsor
TN Status for Citizens of Mexico & Canada	Yes – Employer Specific
E-1/E-2 Treaty Visa	Yes – Employer Specific

B-1 Business Visitor

- **Definition:** Limited short-term business visit up to 6 months, excluding performing skilled or unskilled labor
 - Remuneration must be from employer/source outside the U.S.
 - Principal place of business and the actual place of accrual of profits is in the foreign country
- **Examples:** business meetings, board meetings, short term training, contract negotiation, business associate consultation, and litigation
 - Investors seeking investment in the U.S.
 - B-1 in lieu of H1 or H3
 - After-sales services if required by sales contract
- **Process:**
 - ESTA Visa Waiver Program
 - Canadians are visa exempted
 - B-1/B-2 visa consular processing - processing time varies based on consulate – significant delay due to COVID

F-1 Students – OPT/CPT

- **Definition:** Full-time students enrolled in an academic educational program, a language-training program, or a vocational program. F-1 students may only work with proper authorization:
 - CPT is training that is an integral part of the student's curriculum
 - Require DSO authorization – Form I-20, No EAD required
 - OPT allows postsecondary students up to 12 months of practical training in their field of study
 - Require DSO authorization and USCIS issued EAD
 - STEM OPT provides STEM students a one-time, 24-Month Extension of post-completion optional practical training (OPT), if employed with an E-verified employer
 - Require an I-983 training plan
 - Require DSO authorization and USCIS issued EAD
- **Process:**
 - DSO authorization and SEVIS update – within days
 - If an EAD is required, file I-765 Application for Employment Authorization with USCIS – 2 months processing time

H-1B Specialty Occupation

- Most popular temporary nonimmigrant employment option
- Specialty occupation
 - Professional position: specialty occupation that requires at least a Bachelor's degree or equivalent in a specific field
 - Foreign national must possess a degree or equivalent in a related field
 - Bachelor's Degree must be directly related to the position
- Must pay the required wage rate – higher of the actual wage or prevailing wage
- Six-year limitation with exceptions

H-1B Filing Process – Two Steps

- **Step 1:** File Labor Condition Application with the DOL (one week processing time)
- **Step 2:** File Form I-129, Petition for Nonimmigrant Worker with USCIS
 - H-1B Portability – can start employment once USCIS receives H-1B petition if candidate is currently in H-1B status
 - Premium Processing – \$2,805 to obtain a decision within 15 business days from filing

The H-1B Cap

- Annual cap on the H-1B category is 65,000 (plus 20,000 for U.S. Master's)
- Establish hiring goals early
- H-1B Cap registration: usually in March for the following FY
- First round filing period starts April 1 for 90 days
- Employment start date in next fiscal year – October 1st or later
- H-1B Cap Exempt: H-1B foreign nationals already counted against the cap or employed by cap exempt employers (i.e. universities, government research institutions...)

E-3 Visas – Alternative to H-1B for Australians

- 10,500 annual visa limit (usually remains available throughout the year)
- Definition: Specialty Occupation (Professional position) – Bachelor's degree required
 - The visa is issued indefinitely in 2-year increments
- Filing Process:
 - A Labor Condition Application required, and employee may only work for sponsoring company
 - Foreign Nationals can apply directly with U.S. consulate or through USCIS

H-1B1: Alternative to H-1B for Singaporeans & Chileans

- 6,800 annual visa limit (Chile: 1,400; Singapore: 5,400) – usually remains available throughout year
- Definition: Specialty Occupation (Professional position) – Bachelor's degree required
 - The visa is issued indefinitely in 18-month increments
- Filing Process:
 - A Labor Condition Application required, and employee may only work for sponsoring company
 - Foreign Nationals can apply directly with U.S. consulate or through USCIS

TN NAFTA Professionals

- **Definition:** TN visa permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level.
 - Occupations are specifically listed in NAFTA treaty – most require a Bachelor's degree.
 - Employer Specific – full time or part time employment with a U.S. employer, no self-employment allowed.
 - Non-immigrant intent required
 - Status approved in three-year increments and renewable indefinitely.
 - No regulatory visa limit
- **Examples:** Accountants; Engineers; Scientists; Medical/Allied Professionals such as Physician (teaching or research only), RNs, OT, PT, RT, Med Lab Scientist; college, university, or seminary teachers; etc.
- **Process:**
 - Canadian citizen –no visa required; same day processing at border POE; or file petition with USCIS and be processed as quickly as two weeks with Premium Processing.
 - Mexican citizens – apply at U.S. consulate – processing time varies. Visa issued for one-year or four-year validity. Can also file with USCIS but require visa to travel internationally.

L-1 Visas: Intracompany Transferees

- A good option for multinational companies moving employees to the US
- Definition: a full-time executive, manager, or employee with specialized knowledge employed with a related foreign entity for 1 full year within the past 3 years
 - Visa Duration: up to 7 years for executives and managers; up to 5 years for specialized knowledge workers
- Process:
 - Individual: File I-129 with USCIS; Consular Process
 - Blanket L: Once Blanket L is approved with USCIS, can Consular process directly
- Permanent residence for Executives and Managers is straightforward through the EB-1C category

O-1 Visas: Extraordinary Ability

Reserved for those who are at the top of their field

- **Definition:** Person who has extraordinary ability in the sciences, arts, education, business, or athletics with sustained national/international acclaim, or extraordinary achievement in the motion picture/television industry.
 - Visa Duration: Initial visa is for 3 years, can extend in 1-year increments indefinitely
- **Examples:**
 - Physician who is performing extremely specialized surgeries
 - Researcher who has published several peer-reviewed articles in her field
 - Company executive who has unique and successful career path
- **Process:**
 - File I-129 with USCIS; Consular Process if outside the country

J-1 Interns, Trainees, Exchange Visitors

Definition: authorized for individuals approved to participate in work- and study-based exchange visitor programs with a cultural exchange element

- Sponsored by an exchange program that is designated by DOS
- Private sector U.S. employers may act as a Host Organization to J-1 visitors
- Develop a detailed training plan with defined objectives, activities, cultural exchange component, and continuous supervision and periodic evaluation
- 12-18 months on the job training
- May trigger a two-year home residence requirement

Examples:

- Bringing an engineering student currently enrolled in a degreed program overseas for a one-year internship
- Other positions such as Professors or scholars, Research assistants, Teachers, Specialists, Au Pairs, Camp counselors

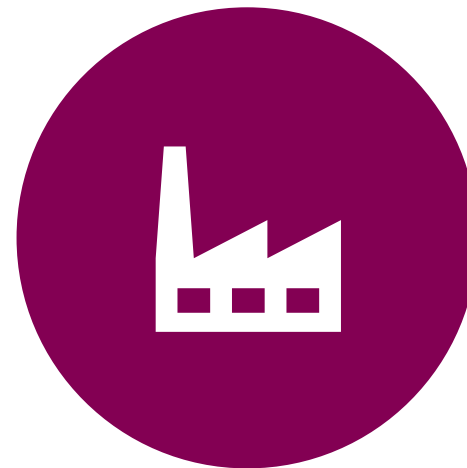
Process for Private Sector Employer:

- Identify and apply for sponsorship with an exchange program sponsor – varies based on sponsor, several weeks
- Apply for a J-1 visa at a U.S. Consulate overseas – varies based on consulate

H-2A and H-2B Temporary Visas



H-2A
AGRICULTURAL



H-2B
NONAGRICULTURAL

H-2A Temporary Agricultural Visas

- **Definition:** A visa for a foreign national to work temporarily in an agricultural position
 - The position must be temporary
 - The position must be in an agricultural, on a farm.
- **Examples** of H-2A occupations:
 - Farm worker
 - Livestock worker
 - Agricultural Equipment Operator

H-2B Temporary Nonagricultural Visas

- **Definition:** The employment must be of a temporary nature for a limited period of time such as a one-time occurrence, seasonal need, peak load need or intermittent need
- **Limited to Numerical cap:** 66,000 per year divided into two. Half first half of fiscal year, half second half of fiscal year (Oct. 1 and April 1)
- There is a limited number of H-2B Eligible countries, and employee must be on the list of countries, or qualify for an exception

Travel Considerations and Consular Processing

- Travel ban
- Consular processing
 - National Interest Exemption
 - Administrative processing and denials
 - Visa wait time and expedited appointment
- Electronic Device Search
- Secondary inspection

“Green Card” Options

Crafting Permanent Residence Strategy – Factors to Consider

When to start the sponsorship process?

- Employer's immigration policy
- NIV max out
- Processing time and visa backlog
- Children age out

Choosing the optimal employment-based pathway to permanent residence

- Is there a permanent job offer?
- Nature of employer's business
- Employee's credentials and background
- Timing

Other pathway to permanent residence

- Family-based immigration options
- Investment-based immigration
- DV lottery
- Asylum

Employment-Based Preference Categories

***No Labor Certification Required**



EB-1A Extraordinary Ability

- Has achieved international acclaim for scientific, business or athletic accomplishments
- Substantial documentation including major awards, original research or contributions, peer reviewed publications, judging, membership in associations requiring outstanding ability, published material written by others about the applicant, high salary, critical role for distinguished organization
- Expert evaluations from peers providing support for acclaim
- Top of the field – burden of proof on the applicant
- Fast track to a green card (1st preference)
- Can premium process – \$2805 for 15 business days
- Unique to the employee's accomplishments, high standard

EB-1B: Outstanding Researcher or Professor

- **Definition:** Employer sponsored. Recognized internationally as outstanding in a specific academic area:
 - Tenure track teaching position at a University or Institution of Higher Education
 - A comparable position at a University or Institution of Higher Education
 - Comparable position to conduct research with private employer with at least 3 full time researchers
- **Required Documentation:**
 - Major awards, original research, peer reviewed publications, judging, membership in associations requiring outstanding ability, published material written by others about the scientist; expert opinions
 - Evidence that the institution is of higher education or conducts research
- Can premium process – receive a decision for I-140 in only 15 days; additional \$2805 I-907 filing fee to USCIS. EB1 –fast employment track

Multi-National Transfer I-140

- Executives or Managers who previously worked as an executive or Manager for a qualifying company outside the U.S. for over one year prior to transferring to the U.S. in a managerial or executive role (L1As)
- Requires deep documentation of corporate relationship and experience as a manager or executive both abroad and in the US
- 45-day Premium Processing
- EB-1 (1st preference) currently no visa backlog

EB-2: National Interest Waiver

- Normally, PERM process is needed for EB-2, unless the work is in the national interest
- National Interest Waiver Definition
 - The PERM process is waived for EB-2 who demonstrates “substantial merit and national importance”, and foreign national is “well positioned” to advance endeavor and on balance in US interest
- Required Documentation
 - Evidence of Advanced Degree or Exceptional Ability
 - Evidence of substantial merit/national importance of endeavor
 - Evidence of foreign national’s accomplishments in field & future goals
- NIW can be filed by employer or foreign national. EB2 (2-year backlog)

PERM 3-Step Process (2nd and 3rd preference)

- PERM
 - Labor certification application through DOL
 - Recruitment by Employer
- I-140
 - Filed with USCIS
 - If employee terminated, may retain priority date
- I-485
 - Filed with USCIS
 - If employee terminated, may retain if pending more than 180 days

**See LPR through PERM overview memo for more details*

PERM Labor Certification (EB-2 or EB-3)

Definition

- A permanent labor certification issued by the Department of Labor (DOL) allows an employer to hire a foreign worker to work permanently in the United States. The filing of applications is the responsibility of the employer, not the employee.
- EB-2: members of the professions holding an advanced degree or its equivalent
- EB-3: professionals, skilled workers, or unskilled workers.

Requirements

- Test of the labor market
- Offered wage must meet or exceed prevailing wage
- Employee must meet the minimum requirements of the offered position prior to filing PERM Labor Certification Application
- Employer's ability to pay

Process

- Prevailing Wage Determination issued by DOL – 6 to 8 months
- Recruitment – 60 days to 180 days
- PERM Certification issued by DOL – 15+ months
- I-140 Immigrant Petition – two weeks if Premium Processing, or several months
- I-485 when priority date is current

Visa Bulletin/Priority Date

- Establishes place in line for Permanent Residence
 - For 3 step process: it is the date the Labor Certification is FILED
 - For 2 step process: it is the date the I-140 is FILED
 - May benefit from “recapture” of Priority Date from previous employment-based process
- Priority Date must be CURRENT to file I-485 Adjustment of Status
- USCIS determines if using Dates of Filing of Final Actions Date:
<https://www.uscis.gov/visabulletininfo>
- DOS issues visa bulletin: Department of State Monthly Visa Bulletin

Lawful Permanent Residence (LPR)

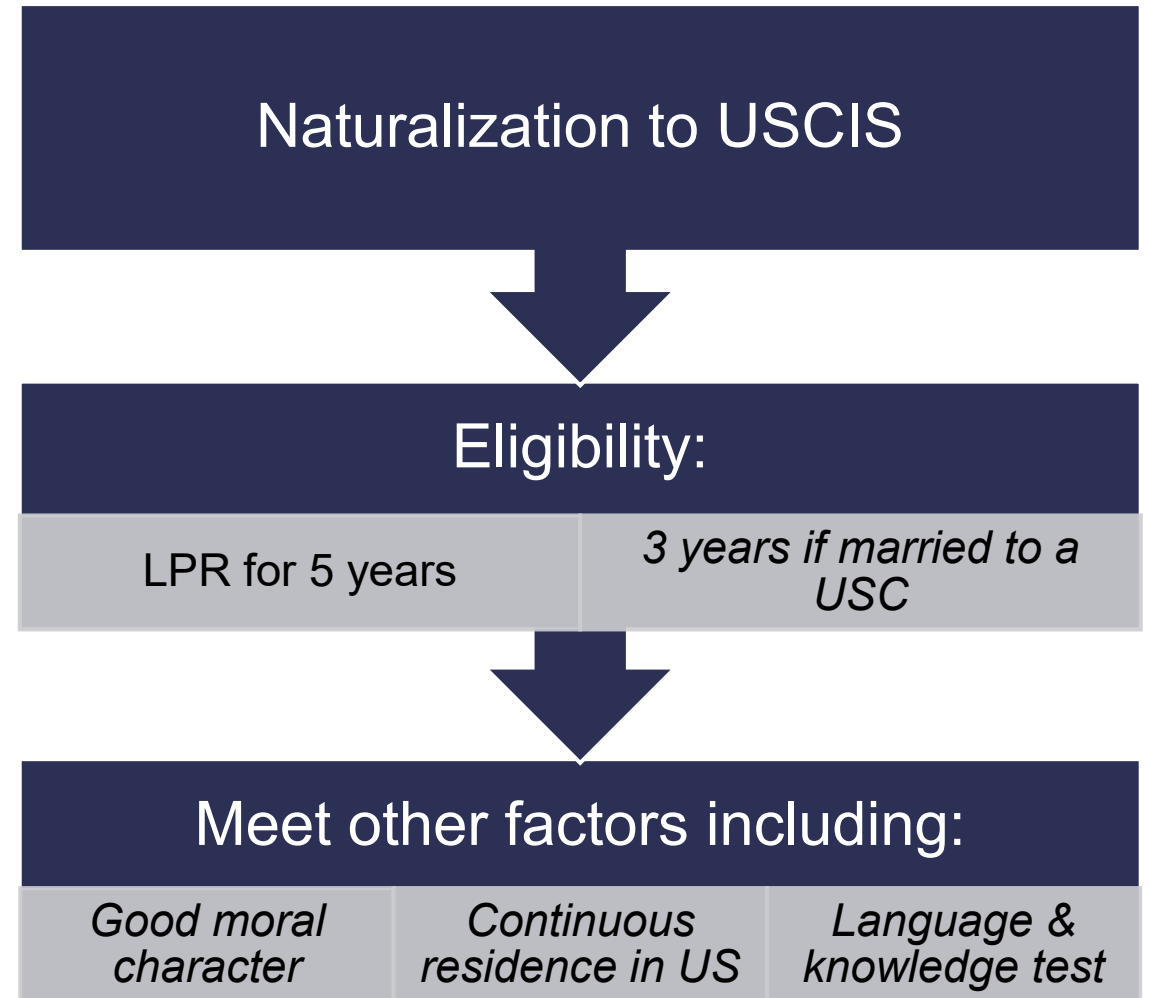
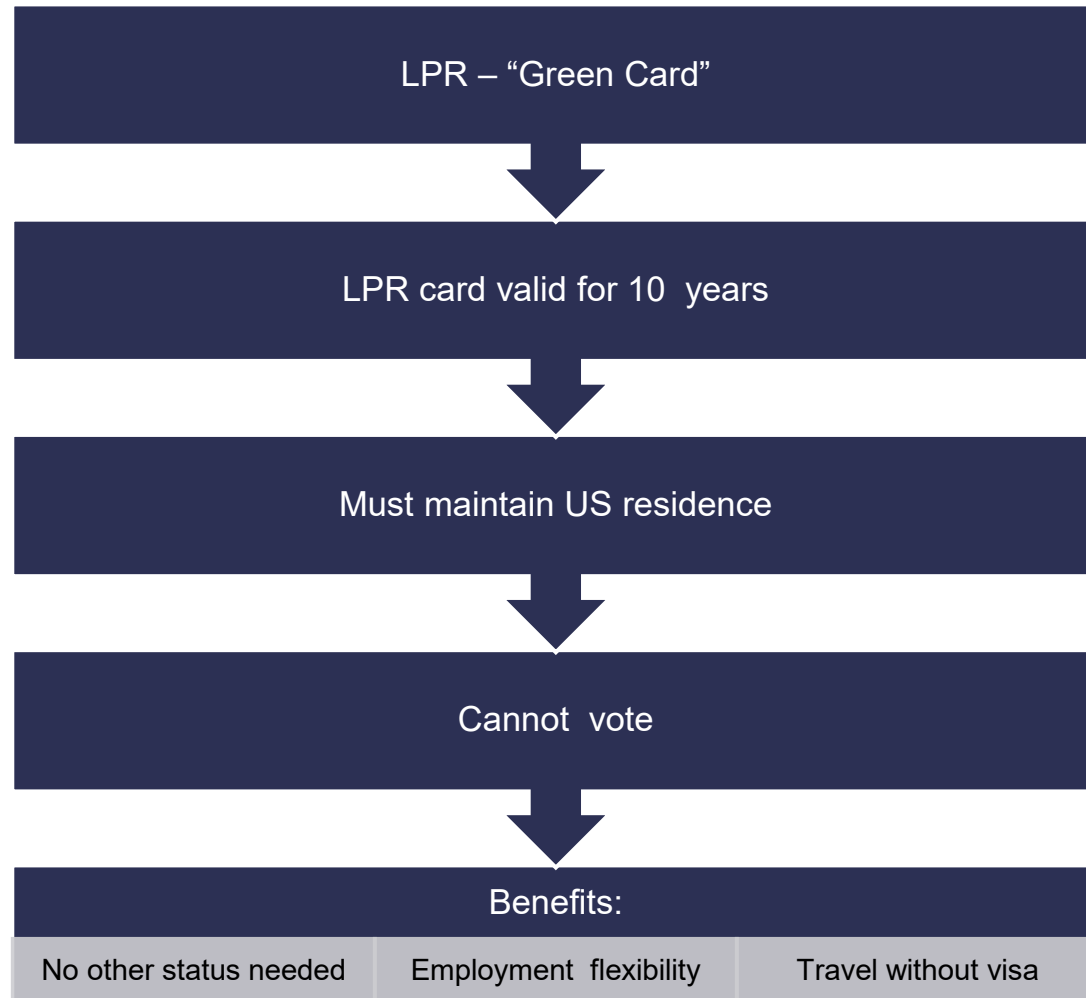
Adjustment of Status

- If inside the U.S.:
 - Filing eligibility based on priority date & IV category
 - Visa bulletin retrogression
- Travel considerations
- Work & travel permits
- Independent basis to remain in US

Consular Processing

- If outside of the U.S.:
 - National Visa Center
 - U.S. Embassy/Consulate abroad
 - Consular backlogs/delays

Lawful Permanent Residence and Naturalization



Form I-9 Basics

- Required of ALL U.S. employees hired after November 6, 1986
- **Section 1:** Employee attests to personal information and citizenship status *on or before **first day** of work for pay*
- **Section 2:** Employer verifies *original* documentation and records identity and employment eligibility of employee *within **3 business days***
- **Section 3:** Employer must re-verify employment authorization when required ***on or before the expiration*** of previous work authorization
- Form I-9 must be completed first and in addition to any E-Verify case submissions, where applicable

I-9 Audits and Inspections

- **Homeland Security Investigations (HSI)** are issuing Notice of Inspection for I-9s and documents - 3 days to comply with I-9s and any subpoena records
- **I-9 Self Audits** - recommended annually
- **Immigration Raids** - meat packing, high risk industries
- **FDNS Site Visits** - If you sponsor foreign nationals (most common for H or L sponsored employees), officers may contact both the employer and employee to verify job duties, worksite, wages and maintenance of status. In person and by phone/email.

Preparing for Worksite Enforcement

- **Centralize:** Designate Company Representative(s)/Liaison(s) who will be point of contact with government & contact legal counsel
- **Communicate:**
 - Provide Legal Counsel's contact information
 - Establish internal communication plan
- **Train:** Conduct trainings and drills with front-line employees and managers (i.e. receptionists, administrative assistants, etc.) on policy

Recent Updates

- ICE Arrests and Enforcement
- End of Humanitarian grants of status (TPS/Parole)
- Increase In Person interviews (USCIS and Consulates)
- Lack of Bond and Detention

Presenters



June Cheng

Attorney

612.492.7399

zcheng@fredlaw.com



Debra Schneider

Attorney

612.492.7214

dschneider@fredlaw.com

Fredrikson



Where Law and Business Meet®