

# Employment Based Green Cards: EB 1 to EB 3 Guide

A comprehensive guide from EB5 Attorneys

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Employment based green cards provide a permanent immigration pathway for foreign nationals sponsored by U.S. employers or, in certain categories, through self petition. Five preference categories exist under INA 203(b): EB 1 for priority workers and multinational executives, EB 2 for advanced degree professionals and exceptional ability, EB 3 for skilled workers and professionals, EB 4 for special immigrants, and EB 5 for investors. Each category has distinct requirements, petition procedures, PERM labor certification rules, and annual numerical limits that interact with the monthly Visa Bulletin.

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## Overview of Employment Based Preference Categories

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Employment based immigrant visas are allocated annually under INA 203(b) with a total of approximately 140,000 visas available per year, though unused family preference numbers may increase this pool. Each preference category receives a percentage of the total allocation.

EB 1 (First Preference) receives 28.6 percent of the total, approximately 40,040 visas per year. It covers three subcategories: EB 1A (aliens of extraordinary ability), EB 1B (outstanding professors and researchers), and EB 1C (multinational executives and managers). EB 1 does not require PERM labor certification, which makes it significantly faster than EB 2 and EB 3 for most applicants.

EB 2 (Second Preference) receives 28.6 percent plus any numbers unused by EB 1. It covers professionals with advanced degrees and persons of exceptional ability in the sciences, arts, or business. The National Interest Waiver (NIW) subcategory, commonly called EB 2 NIW, allows self petition without employer sponsorship under INA 203(b)(2)(B). PERM labor certification is required for employer sponsored EB 2 cases unless NIW is obtained.

EB 3 (Third Preference) receives 28.6 percent plus unused EB 1 and EB 2 numbers. It covers three subcategories: EB 3 skilled workers (jobs requiring at least two years of training or experience), EB 3 professionals (jobs requiring a baccalaureate degree), and EB 3 unskilled workers (other workers performing unskilled labor requiring less than two years of training). PERM labor certification is required for all EB 3 categories.

EB 4 covers special immigrants including religious workers, certain broadcasters, and other specific populations. EB 5 covers investors who invest \$1,050,000 (or \$800,000 in Targeted Employment Areas) and create at least 10 full time jobs for qualifying U.S. workers.

Per country numerical limits under INA 202(a) cap any single country at seven percent of the total employment based allocation per year. India and China face the most severe backlogs due to high demand relative to the cap, with EB 2 and EB 3 India dates for final action extending more than a decade behind the filing date in some periods.

## EB 1A: Aliens of Extraordinary Ability

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EB 1A under INA 203(b)(1)(A) is designed for individuals who have risen to the very top of their field in the sciences, arts, education, business, or athletics. The standard requires demonstrating sustained national or international acclaim and recognition in the field of expertise.

Self petition is permitted; no employer sponsor is required. The petitioner must satisfy either a major internationally recognized award (analogous to a Nobel Prize, Olympic medal, or Academy Award) or at least three of ten regulatory criteria listed at 8 CFR 204.5(h)(3): receipt of lesser nationally or internationally recognized prizes or awards; membership in associations requiring outstanding achievement; published material in professional or major trade publications about the person's work; judging the work of others in the field; original scientific, scholarly, artistic, or business contributions of major significance; authorship of scholarly articles in professional journals or other major media; display of work at artistic exhibitions or showcases; performing a leading or critical role for distinguished organizations; commanding a high salary relative to others in the field; or commercial success in the performing arts.

USCIS evaluates EB 1A petitions under a two step framework established by the USCIS Policy Manual and court decisions including *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010): first, whether the petitioner has provided evidence meeting at least three criteria; second, a final merits determination assessing whether the totality of evidence demonstrates sustained acclaim and recognition at the top of the field.

Evidence that supports strong EB 1A cases includes: citation analysis showing significant influence on the field (using databases like Google Scholar, Web of Science, or Scopus); expert letters from recognized authorities in the field who can attest to the petitioner's contributions and reputation; documentation of competitive grants or fellowship awards; documentation of invitations to peer review manuscripts for prestigious journals; and media coverage in major publications of general circulation or professional trade outlets. Form I 140 with the EB 1A basis has a current USCIS government fee of \$715.

## EB 1B and EB 1C: Outstanding Researchers and Multinational Executives

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EB 1B under INA 203(b)(1)(B) covers outstanding professors and researchers who are recognized internationally as outstanding in a specific academic area. Unlike EB 1A, EB 1B requires a job offer from a qualifying employer: a university or institution of higher education, a private employer with a department or division that conducts research, or a government research organization. The employer files the I 140 petition on behalf of the beneficiary.

The petitioner must document at least two of six criteria under 8 CFR 204.5(i)(3): receipt of major prizes or awards for outstanding work; membership in associations requiring outstanding achievement; published material in professional publications about the researcher's work; participation as a judge of others' work; original scientific or scholarly research contributions of major significance; or authorship of scholarly books or articles in scholarly journals with international circulation. The researcher must also have at least three years of experience in teaching or research in the academic area.

EB 1C under INA 203(b)(1)(C) covers multinational managers and executives. The employer must have employed the beneficiary in a qualifying managerial or executive capacity for at least one of the three years preceding the petition, and the beneficiary must be coming to the United States to continue service in a managerial or executive capacity for the same employer, a subsidiary, or an affiliate. This category is frequently used by multinational corporations transferring foreign national executives to the United States. The statutory definitions of managerial and executive capacity at INA 101(a)(44) are precise and require careful analysis of actual job duties. USCIS scrutinizes EB 1C petitions to confirm that the beneficiary is actually managing an organization or department, not performing primarily operational tasks.

## EB 2: Advanced Degree Professionals and Exceptional Ability

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EB 2 under INA 203(b)(2) covers two main populations: professionals holding advanced degrees (or the equivalent) and persons of exceptional ability in the sciences, arts, or business.

The advanced degree prong requires a U.S. master's degree or higher, or a foreign equivalent, or a U.S. bachelor's degree or foreign equivalent plus at least five years of post baccalaureate progressive experience in the specialty under 8 CFR 204.5(k)(2). Employer sponsorship with PERM labor certification is required unless the NIW exception applies.

The exceptional ability prong under 8 CFR 204.5(k)(3) requires satisfying at least three of six criteria: degree in the field of exceptional ability; letters from current or former employers documenting at least 10 years of full time experience; professional license or certification required to practice the occupation; commanding a salary reflecting exceptional ability relative to others in the field; membership in professional associations; or recognition for achievements and contributions to the field by peers, government, or professional or business organizations.

The National Interest Waiver (EB 2 NIW) is the most powerful feature of EB 2 because it permits self petition without employer sponsorship or PERM labor certification if the petitioner demonstrates that their proposed endeavor has substantial merit and national importance, they are well positioned to advance it, and it would be beneficial to the United States to waive the job offer requirement. The legal standard comes from *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), which replaced the earlier standard from *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (AAO 1998). NIW is commonly used by researchers, entrepreneurs, physicians, engineers, and other highly qualified professionals who can demonstrate that their work benefits the United States more broadly than a specific employer.

## EB 3: Skilled Workers, Professionals, and Unskilled Workers

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EB 3 under INA 203(b)(3) is the most broadly accessible employment based category but typically involves the longest processing timelines for high demand countries due to its position in the preference order.

EB 3 skilled workers under 8 CFR 204.5(l)(2) covers positions requiring at least two years of job training or experience that are not temporary or seasonal. The employer must demonstrate through PERM labor certification that no qualified U.S. workers are available for the position at the prevailing wage. USCIS requires documentation that the employer conducted a bona fide recruitment effort and did not reject qualified U.S. applicants.

EB 3 professionals under 8 CFR 204.5(l)(2) covers members of the professions holding a baccalaureate degree and positions for which the degree requirement is standard in the occupation. PERM is also required. The distinction between EB 2 and EB 3 professionals is the presence or absence of an advanced degree, and the distinction matters significantly for priority date purposes given that EB 2 numbers are allocated ahead of EB 3 under the preference system.

EB 3 unskilled workers (other workers) covers positions requiring less than two years of training or experience. This subcategory receives only 10,000 visas per year under INA 203(b)(3)(B), creating severe backlogs for virtually all countries and making it the slowest employment based pathway.

PERM labor certification under 20 CFR 656 is a prerequisite for most EB 2 and all EB 3 petitions. The employer files an Application for Permanent Employment Certification (ETA Form 9089) with the Department of Labor. The employer must first conduct a prevailing wage determination from the National Prevailing Wage Center, then recruit through specific channels for at least 30 days, document the results, and certify that no qualified available U.S. workers were found. Audit selection is random but certain red flags (such as beneficiary with unusual credentials for the position) increase audit risk. Current PERM processing times range from 6 to 18 months depending on audit selection.

## Form I 140: Immigrant Petition for Alien Workers

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Form I 140 is the immigration petition filed with USCIS that formally establishes the employer's intent to sponsor the foreign national worker (or the self petitioner's eligibility) for an employment based green card. The I 140 must be filed with the required evidence package and filing fee.

Government fees for I 140 filings are currently \$715 per petition as of the April 2024 USCIS fee schedule. Premium processing is available for I 140 petitions at an additional fee of \$2,805, which guarantees a 15 business day response (either approval, denial, or Request for Evidence). Premium processing does not guarantee approval; it only guarantees the timeline for a USCIS response.

Evidence required with the I 140 varies by category but typically includes: a valid PERM labor certification for EB 2 (non NIW) and EB 3 categories; evidence of the beneficiary's qualifications (educational transcripts, diplomas, experience letters, licenses); evidence of the petitioner's financial ability to pay the proffered wage (as established in Matter of Sonogawa, 12 I&N Dec. 612 (BIA 1967) and 8 CFR 204.5(g)(2)); and category specific extraordinary ability or outstanding researcher evidence for EB 1 cases.

I 140 approval is a critical milestone because it locks in the beneficiary's priority date. Even if the beneficiary later changes employers, the original priority date can be ported to a new petition if the beneficiary has been waiting for adjustment of status for more than 180 days under INA 204(j). This portability provision, added by the American Competitiveness in the 21st Century Act (AC21), allows workers to change to the same or similar occupation without losing their priority date.

USCIS issues Requests for Evidence (RFEs) when the initial submission is incomplete or raises questions about eligibility. RFE responses are due within 87 days of issuance. Failure to respond timely results in denial. An attorney experienced in employment based petitions can prepare thorough I 140 petitions that minimize RFE risk and, when RFEs are issued, draft responsive submissions that directly address the identified concerns.

## Concurrent Filing and Priority Date Mechanics

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When an employment based visa number is immediately available in the Visa Bulletin, the employer can file the I 140 and the beneficiary's I 485 concurrently. Concurrent filing allows the beneficiary to apply for work authorization (Form I 765) and advance parole (Form I 131) immediately, providing employment flexibility and travel capability while the green card application is pending.

For EB 1 petitioners (no PERM required) from countries other than India and China, visa numbers are typically immediately current, and concurrent filing is usually available. For EB 2 and EB 3 petitioners from India, China, or other countries with backlogs, concurrent filing requires monitoring the Visa Bulletin each month.

USCIS publishes two charts in coordination with the State Department: Dates for Filing (Chart A) and Final Action Dates (Chart B). Filing under Chart A does not guarantee immediate approval; it simply allows the application to be received and processed. A final green card approval requires a current Final Action Date. The practical benefit of Chart A filing is obtaining work authorization and advance parole while waiting for the Final Action Date to become current.

The priority date also determines benefits under 8 CFR 245.25 (the ability to retain priority dates across employer changes under AC21), and under the Child Status Protection Act (CSPA), 8 U.S.C. 1153(h), which protects children of employment based applicants from aging out of derivative beneficiary status due to processing delays. Under CSPA, the child's age is calculated by subtracting the time the I 140 was pending from the child's actual age, potentially preserving under 21 status for children who turn 21 during the process.

Tracking current and retrogressing priority dates through the monthly Visa Bulletin is essential for employment based applicants. Resources including [eb5status.com/visa-bulletin](http://eb5status.com/visa-bulletin) and the State Department's historical data allow beneficiaries to estimate their wait and plan career decisions accordingly.

## Timelines, Costs, and Strategic Considerations

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Employment based green card timelines depend on three variables: the preference category, the beneficiary's country of chargeability, and USCIS and DOL processing delays.

For EB 1 cases from countries other than India and China, total processing from I 140 filing through green card approval typically ranges from 12 to 24 months for adjustment of status, with concurrent I 485 filing for most applicants. India and China EB 1 cases face priority date backlogs, with final action dates moving slowly in periods of high demand.

For EB 2 and EB 3 cases from countries other than India and China, the PERM process adds 6 to 18 months before I 140 filing, and current Final Action Dates are typically available within 1 to 2 years for most countries after I 140 approval. India and China EB 2 and EB 3 cases face multi decade backlogs, making effective career and immigration planning essential for professionals from those countries.

Total government fees for an employer sponsored EB 3 case through adjustment of status include: prevailing wage determination (no fee), PERM ETA 9089 (no filing fee, but associated recruitment costs), I 140 at \$715, I 485 at \$1,440 per principal applicant, I 765 at \$0 concurrent with I 485, and I 131 at \$0 concurrent with I 485. Premium processing for I 140 adds \$2,805. Attorney fees vary significantly by market and case complexity; PERM preparation alone may cost \$3,000 to \$8,000, and comprehensive representation through I 485 approval may cost \$8,000 to \$20,000 or more.

Key strategic considerations include: whether EB 1A or EB 2 NIW self petition is feasible given the beneficiary's credentials (eliminating PERM delays and employer dependency); whether the beneficiary's priority date could be ported from a prior employer if changing jobs; whether CSPA calculations protect derivative children; and whether any current country of chargeability strategies (using a spouse's country of birth if it has a more favorable date) apply under 9 FAM 502.4 4(B)(1).

# Frequently Asked Questions

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## 1. What is the difference between EB 1A, EB 1B, and EB 1C?

EB 1A is for persons of extraordinary ability who can self petition and need no employer sponsor. EB 1B is for outstanding professors and researchers, which requires an employer sponsor at a qualifying institution or research organization and at least three years of research or teaching experience. EB 1C is for multinational managers and executives who have been employed by the same multinational employer abroad in a qualifying capacity for at least one of the past three years. All three subcategories are part of the First Preference allocation and do not require PERM labor certification, making them faster than EB 2 or EB 3 for most applicants.

## 2. Do I need an employer to sponsor me for an employment based green card?

Not necessarily. EB 1A (extraordinary ability) and EB 2 NIW (National Interest Waiver) both permit self petition without employer sponsorship. EB 1A requires evidence of sustained national or international acclaim meeting the regulatory criteria at 8 CFR 204.5(h)(3). EB 2 NIW requires showing that the proposed endeavor has substantial merit and national importance, the petitioner is well positioned to advance it, and a waiver of the job offer requirement would benefit the United States under the Dhanasar framework. All other employment based categories require employer sponsorship and, for EB 2 and EB 3, PERM labor certification.

## 3. How long does the PERM labor certification process take?

PERM processing at the Department of Labor currently takes approximately 6 to 18 months from the date of application filing under ETA Form 9089, depending on whether the case is selected for audit. Cases not selected for audit are processed in roughly 6 to 9 months at current DOL processing speeds. Cases selected for audit require the employer to respond to DOL's requests for additional documentation, adding 6 to 12 months or more. Supervised recruitment cases, where DOL requires the employer to conduct recruitment under DOL supervision, take the longest. The PERM process must be completed before the employer can file the I 140 petition for EB 2 (non NIW) and EB 3 categories.

#### **4. What is priority date portability and how does it work?**

Priority date portability under INA 204(j) and AC21 allows an employment based beneficiary to change employers without losing their original priority date if: the I 140 petition was approved; the I 485 has been pending for 180 days or more; and the new position is in the same or similar occupational classification as the original petitioned position. The new employer must file a new I 140 petition, but the beneficiary can request that USCIS recognize the earlier priority date from the old employer's petition. This provision is critical for beneficiaries facing multi year waits who want to change jobs without restarting the queue.

#### **5. Why do India and China nationals face such long wait times for employment based green cards?**

The per country cap under INA 202(a) limits any single country to no more than seven percent of the total employment based visa allocation in any fiscal year, regardless of demand from that country. India and China have historically generated far more employment based petitions than the seven percent cap allows to be issued each year. The excess demand accumulates in a backlog, and priority dates for India and China advance only as fast as the seven percent cap allows numbers to be used. For India EB 2 and EB 3, current final action dates are more than a decade behind the filing date, meaning professionals from India who filed I 140 petitions today may wait 10 to 20 or more years for a final green card approval.

#### **6. What is the National Interest Waiver and who qualifies?**

The National Interest Waiver (NIW) under INA 203(b)(2)(B) allows EB 2 petitioners to self petition without employer sponsorship or PERM labor certification by demonstrating that their work is in the national interest of the United States. Under the Dhanasar standard (Matter of Dhanasar, 26 I&N Dec. 884, AAO 2016), the petitioner must show: the proposed endeavor has substantial merit and national importance; the petitioner is well positioned to advance the proposed endeavor; and it would be beneficial to waive the job offer and labor certification requirements. Common NIW beneficiaries include researchers with significant publication records, physicians agreeing to work in underserved areas, engineers working on critical infrastructure, and entrepreneurs with evidence of investment backing and business traction.

## 7. Can my family members get green cards through my employment based petition?

Yes. Derivative beneficiaries, meaning spouses and unmarried children under 21 of the principal employment based applicant, can be included in the same I 485 adjustment of status filing or receive derivative immigrant visas through consular processing under INA 203(d). They share the principal applicant's priority date and preference category. The Child Status Protection Act (CSPA) provides age protection for children who turn 21 during the process, using a formula that subtracts the I 140 pending time from the child's age to determine whether they qualify as under 21. However, CSPA has limitations, and age out situations still occur in some complex scenarios that require legal analysis.

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