



**DAVID SWAIM
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U.S. IMMIGRATION AND
NATIONALITY LAW

FAQ's

General Immigration Issues

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.

General Immigration Issues

1. What is a visa?

A visa is essentially a travel document issued by an American Consulate outside the U.S. (there are no American Consulates in the U.S.) which allows an individual to travel to the U.S. and request admission to the country. Once admitted to the U.S., the visa is not important until the person leaves.

2. What if my visa expires?

If you are in the U.S. it does not matter if your visa expires. A valid visa is only required when you are trying to enter the U.S.

3. What is "status"?

Status is your right to remain in the U.S. You must have valid immigration status at all times. This is reflected on your "I-94" card which you are given each time you are inspected and admitted to the U.S. When you are physically in the U.S. you must have a valid "I-94" card but you do not need to have a valid visa.

4. What is a passport?

A passport is also a travel document like a visa. However, the true purpose of a passport is to confirm to the U.S. government (or any government) that if you violate the laws of a foreign country, your country of citizenship will take you back. In other words, the passport guarantees the U.S. government that there is some place to send you if you must be removed from the U.S. A valid passport is required at all times while in the U.S.; a valid visa is not.



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FAQ's H-1B Professional Workers

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H-1B

1. Does any college degree qualify for H-1B?

Generally, the H-1B category requires at least a bachelor's degree in a technical field such as engineering, computer science, the applied sciences or business areas such as accounting, economics or finance. Note that general business degrees, including MBA's, may not qualify unless there is a concentration in a specific technical field.

2. If I have a degree in a technical field, can I accept any type of employment H-1B?

No. The job which forms the basis to obtain an H-1B status must require at least a bachelor's degree in a technical field. If the job only requires a bachelor's degree in any area, it will not qualify for H-1B status.

3. Does the employer have to be a certain size to apply for H-1B?

No. The only requirement is that the company must have sufficient funds to pay the required salary to the H-1B employee, and there must be work available for the employee at all times.

4. Once I obtain H-1B status, can I travel outside the U.S.?

Obtaining a change of status to H-1B does not provide you with a visa. Remember, you must have a valid visa to re-enter the U.S. unless you are a citizen of Canada. A visa can only be obtained at an American Consulate outside the U.S. Another exception to this rule is that you may travel to Canada or Mexico and return without a visa if you left the U.S. in valid H-1B status. This special rule for Canada and Mexico also applies to other nonimmigrant classifications such as F-1 students. However, this category is not available to all nationalities and you must check with your international office or employer before traveling. It also is not available if you apply for a U.S. visa while in Canada or Mexico and the visa is denied.

5. All my friends say it is very difficult to get an H-1B visa from the American Consulate in my country. Is this true?

No. It is very difficult for an American Consulate to deny an H-1B visa if the applicant has all the required documentation at the time of application. The individuals who are denied H-1B visas generally do not have the required documentation or did not qualify for the H-1B category in the first place. In most cases, it is not necessary to travel to Canada or Mexico in order to get an H-1B visa prior to traveling to your home country and we strongly recommend against doing this.

6. Can I change jobs once I obtain H-1B status?

If you change jobs even within the same company, a new H-1B petition is normally required. This is a particularly important point which must be considered during the preparation of the labor certification application for permanent residence. In other words, your H-1 petitions/H-1 positions will have an impact on green card processing later.



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FAQ's Permanent Residence Through Employment

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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.