

Immigration Overview



martensen  **wright_{pc}**

Martensen Wright PC – Immigration

Martensen Wright PC can help with your company's immigration needs. Presented here is an overview of the many immigration matters we are equipped to handle on your behalf.

According to the Pew Research Center, the United States has more immigrants than any other country in the world, accounting for approximately one-fifth of the world's immigrants. More than 40 million people living in the U.S. were born in another country.

“We came to America, either ourselves or in the persons of our ancestors, to better the ideals of men, to make them see finer things than they had seen before, to get rid of the things that divide and to make sure of the things that unite.”

-President Woodrow Wilson

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Introduction to Immigration Basics

U.S. Government Agencies Involved in Immigration

1) Department of Homeland Security (DHS)

- U.S. Citizenship and Immigration Services (USCIS)
 - Responsible for immigration benefits
 - Service Centers adjudicate (judge) petitions and applications
 - Four regional service centers (California, Nebraska, Texas and Vermont)
 - National Benefits Center
- Customs and Border Patrol (CBP)
 - Responsible for inspecting foreign nationals at ports of entry (such as airports, harbors, and border crossings) to determine admissibility
- Immigration and Customs Enforcement (ICE)
 - Responsible for enforcing compliance and U.S. immigration law.

2) Department of State (DOS)

- U.S. consulates and embassies adjudicate visa applications and issue visas to foreign nationals.

3) Department of Labor (DOL)

- Responsible for U.S. wage and labor market protections pertaining to the employment of foreign nationals. DOL handles:
 - Labor certification applications (PERM)
 - Labor condition applications (LCA)
 - Prevailing wage determinations (PWD)

4) State Workforce Agencies (SWA)

- Process job orders for labor certification cases

Common Immigration Acronyms

AOS – Adjustment of Status

AP – Advanced Parole

BOL – Bureau of Labor Statistics

CBP – Customs & Border Protection

DHS – U.S. Dept. of Homeland Security

DOS – U.S. Dept. of State

DOL – U.S. Dept. of Labor

D/S – Duration of Stay

EAD – Employment Authorization
Document

EB – Employment-Based

ESTA – Electronic System for Travel
Authorization

FB – Family-Based

FN – Foreign National

GC – Green Card

IV – Immigrant Visa

LCA – Labor Condition Application

LPR – Legal Permanent Resident

NIV – Non-Immigrant Visa

NOID – Notice of Intent to Deny

NVC – National Visa Center

PED – Petition End Date

PERM – Program Electronic Review
Management

PD – Priority Date

POE – Port of Entry

PP – Premium Processing

PW / PWD – Prevailing Wage / Prevailing
Wage Determination

RFE – Request for Evidence

SAO – Security Advisory Opinion

SWA – State Workforce Agency

USCIS – U.S. Citizenship & Immigration
Services

VWP – Visa Waiver Program

Common Immigration Terminology

- ❖ Non-immigrant = foreign nationals who are allowed to enter the United States for a specific purpose and for a limited period of time, such as tourists, students, business visitors, diplomats and specialty occupation workers, such as high-tech workers or seasonal agricultural workers.
- ❖ Immigrant = any legal foreign national in the U.S. other than those in a specified class of non-immigrant foreign nationals such as temporary visitors, temporary workers, or students.
- ❖ Beneficiary = refers to anyone who gains an immigration benefit (often the individual for whom an immigrant or non-immigrant petition is filed).
- ❖ Petitioner = the person or company sponsoring the visa petition
- ❖ Employment-based (EB) Visa = refers to the visa categories that must be sponsored by a U.S. employer/company. This employer would be considered the petitioner in cases of EB visas, both non-immigrant and immigrant visa types.
- ❖ Family-based (FB) Visa = refers to the visa categories in which a U.S. citizen (USC) or legal permanent resident (LPR) of the United States can petition for certain family members to immigrate to the U.S. or to remain in the U.S. permanently. Only certain family relationships are eligible for this visa category – namely those who are considered immediate relatives.
- ❖ Adjustment of Status (AOS) = the process by which a foreign national can apply for lawful permanent residency (green card) in the U.S.
- ❖ Dual Intent = This is a U.S. immigration law concept in which certain types of visas allow foreign nationals to enter the U.S. as a temporary nonimmigrant but retain the option to apply for a green card. Visas that are considered 'dual intent visas' include: H-1B, K, L, V, O, P, and E visas (restrictions apply).
- ❖ Priority Date = the date USCIS received the Immigrant Visa petition (I-130- or I-140 petition). Often thought of as the foreign national's place in the green card line.

What is an I-94?

Form I-94 (often simply called 'I-94') is the CBP arrival/departure record issued to foreign nationals who are physically admitted to the U.S.

The CBP used to physically stamp a foreign national's passport upon entry (known as an admission stamp) which reflected the I-94 expiration date. However, this practice has been discontinued. Now, a foreign national must check their I-94 online.

The I-94 is the controlling date which indicates when a visitor must exit the U.S., NOT the visa validity date.

USCIS can also issue I-94s when the agency approves an NIV petition. This new I-94 can be found at the bottom left corner of the I-797 approval notice.

CBP I-94

The screenshot shows the CBP I-94 online record. At the top is the U.S. Customs and Border Protection logo and the text "U.S. Customs and Border Protection Securing America's Borders". Below this is the heading "Most Recent I-94". The record details are as follows:

- Admission (I 94) Record Number: 45077 [redacted]
- Most Recent Date of Entry: 2020 January 19
- Class of Admission: E2
- Admit Until Date: 01/18/2022

Details provided on the I-94 Information form:

- Last/Surname: [redacted]
- First (Given) Name: [redacted]
- Birth Date: 1982 December 31
- Passport Number: [redacted]
- Country of Issuance: Denmark

Red arrows point from labels to specific fields: "I-94 Number" points to the Record Number, "Visa category of foreign national" points to the Class of Admission, and "I-94 expiration date" points to the Admit Until Date.

USCIS I-94

The screenshot shows the USCIS I-94 online record. At the top is the heading "Detach This Half for Personal Records". The record details are as follows:

- Receipt#: WAC2 [redacted]
- I-94#: 45077537 [redacted]
- NAME: [redacted]
- CLASS: L1A
- VALID FROM: 06/01/2020 UNTIL: 06/10/2023
- PETITIONER: [redacted]
- MIAMI FL 33130

Red arrows point from labels to specific fields: "I-94 number" points to the I-94#, and "I-94 expiration date" points to the UNTIL date.

Common USCIS Forms

| USCIS Form | Purpose | Description |
|------------|--|---|
| G-28 | Notice of Entrance of Attorney | <i>Used if there is an attorney completing forms or filing petition/application on behalf of a petitioner, beneficiary or applicant</i> |
| I-129 | Visa categories E, H, L, O, P, Q, R, or TN | <i>Petitions for non-immigrant workers</i> |
| I-129F | K-1 | <i>This form is used by U.S. citizens (USC) for their foreign fianc(é)es</i> |
| I-129S | L-1 | <i>Used to classify L-1 nonimmigrant intracompany transferees under a previously approved blanket L petition.</i> |
| I-130 | FB green card | <i>Used to petition for an eligible relative to come or remain in the U.S. and get a green card.</i> |
| I-130A | FB green card | <i>Filed concurrently with I-130 – used to collect additional info for a spouse beneficiary of Form I-130.</i> |
| I-131 | Application for Travel Document | <i>Form used to apply for a reentry permit, refugee travel documents, advanced parole travel documents, or advanced permission to travel for CNMI long-term residents. – Used to travel outside the U.S. for green card holders</i> |
| I-140 | EB-1, EB-2, & EB-3 | <i>EB Immigrant petition for Alien Worker - This form is used to petition for an alien worker to become a permanent resident in the U.S.</i> |
| I-485 | Lawful Permanent Resident (green card holder) | <i>Application to Register Permanent Residence or Adjust Status- This is the form used to apply for the green card itself (either EB or FB green cards)</i> |
| I-539 | H-4, L-2, O-3 dependent visas | <i>This form is used by dependents of EB nonimmigrant visa holders to apply for a dependent visa based on the principal's visa status</i> |
| I-539A | Additional info for I-539 | <i>Used for filing multiple dependent applications in connection to the same principal, usually used for dependent children under 21</i> |
| I-765 | Application for Employment Authorization | <i>Used by eligible visa holders and immigrants to request employment authorization and an Employment Authorization Document (EAD)</i> |
| I-864 | Affidavit of Support to sponsor FB immigrant applicant | <i>Contract signed by FB petitioner (sponsor) agreeing to use their financial resources to support the intending immigrant named in the affidavit.</i> |
| I-907 | Premium Processing | <i>Used if the petitioner is requesting that the petition be processed with Premium Processing (15 business days)</i> |
| N-400 | Application for Naturalization | <i>This form is to apply for U.S. citizenship for those born outside the U.S.</i> |

Common Department of State Forms

| Dept. of State Forms | Purpose | Description |
|----------------------|-------------------------------|--|
| DS-160 | Nonimmigrant visa application | Form used to apply at a U.S. consulate for a nonimmigrant visa to travel to the U.S. on a temporary basis and for K visas. |
| DS -156E | E-1 / E-2 | Form used to apply at a U.S. consulate for a nonimmigrant treaty trader (E-1) or treaty investor (E-2) visa. |
| DS-260 | Immigrant visa application | Form used to apply at a U.S. consulate for an immigrant visa (permanent resident visa) to travel to the U.S. |

Visa category types

Non-Immigrant Visas (NIV)

- ✚ The intent is to stay in the U.S. on a temporary basis, usually for a specific reason.
- ✚ Many NIV sub-categories
 - The appropriate NIV category depends upon the foreign national's qualifications and activities in the U.S.
- ✚ Some classifications allow for "dual intent" (intent to stay temporarily and intent to seek permanent residence in the future).

Immigrant Visas (IV)

- ✚ The intent of immigrant visas is to remain in the U.S. permanently.
- ✚ The two sub-categories of IVs are employment-based and family-based visas.

Employment-Based Non-Immigrant Visas

Employment-based visas require a U.S. employer to sponsor the foreign national, meaning that a job offer is necessary.

NIV – B1/B2

B-1 Visa = the foreign national is entering the U.S. to perform authorized or legitimate business activities.

- Legitimate business activities include business meetings, training, conferences, joint development projects, and other such activities
- No productive work can be done, including no revenue generated by the foreign national while they are in the U.S. on the B-1
- All activities performed in the U.S. must benefit the foreign employer
- The foreign national must remain on the foreign employer's payroll
- The foreign national cannot receive compensation from a U.S. host except for expenses incident to travel such as lodging or meals

The duration of B-1 stay depends up on the duration of the intended business activities. Two to six weeks is typical but can extend to a maximum of six months.

The B-1 visa can be issued for up to 10 years, but this does not allow the foreign national to remain in the U.S. for the entire visa validity period. The visa validity only means that the foreign national does not have to apply for a new B-1 visa each time they want to travel to the U.S if the initial B-1 visa is still valid.

The **B-2 visa** is issued for personal travel, medical treatment or tourism.

The foreign national applies for the visa at a U.S. consulate abroad – no USCIS petition necessary.

NIV - Business Visitors *(Visa Waiver Program)*

The Visa Waiver Program (VWP) allows visa-free entry for business and tourism stays of up to 90 days.

ESTA (electronic system for travel authorization) is an automated system that determines the eligibility of visitors to travel to the U.S. under the VWP. The foreign national needs advance online approval for ESTA prior to traveling to the U.S.

****Like the B-1 visa, no productive work can be performed by the foreign national while they are in the U.S. on ESTA as this program does not provide work authorization.**

See the list of countries allowing for VWP for its national here:

<https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>

Travelers in the following categories must obtain a visa prior to traveling to the U.S. as they are no longer eligible to travel under the VWP:

- Nationals of VWP countries who have traveled to or been present in the Democratic People's Republic of Korea, Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country).
- Nationals of VWP countries who are also nationals of Democratic People's Republic of Korea, Iran, Iraq, Sudan, or Syria.

Effective April 1, 2016, **all** VWP travelers (including infants and children), must present an e-Passport (a travel document which is machine-readable and contains an electronic chip).

No extension of stay or change of status is permitted for VWP travelers. This program does not allow dual intent.

NIV – E Visa Category (E-1 & E-2)

(*E-1 Visa*)

The E visa category encompasses treaty traders and investors who come to the U.S. under a treaty of commerce and navigation between the U.S. and the country of which they are a citizen or national. At the time of the application for an E visa, the individual is required to demonstrate intent to leave the U.S. at the end of the authorized stay.

The **E-1 visa** = a Treaty Trader visa that allows foreign nationals or foreign employees of companies to enter the U.S. to carry out international trade.

To qualify for either the E-1 or E-2, the foreign national must be from a country which has a treaty with the U.S. While many countries have both trader and investor treaties with the U.S., allowing foreign nationals to qualify for either visa category, there are some which only have one or the other. See the list of treaty countries at the U.S. State Department website: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html>

To qualify for the E-1, in addition to being from a treaty trader country, the foreign national or the company sponsoring the foreign national must:

- Carry on substantial trade, defined as, “continuous flow of sizable international trade items, involving numerous transactions over time”; and
- Carry on principal trade, meaning more than 50 percent of total volume of international trade, between the trader’s treaty country and the United States.

An employee of a treaty trader can also qualify for the E-1 if they are:

- An executive, manager or specialist employed by a company operating on an E-1 visa in the U.S.
- A citizen of a treaty country and be of the same nationality as the main foreign national employer (who must have the nationality of the treaty country)

Spouses of E-1 visa principals may apply for work authorization after they enter the U.S. on an E-1 visa

NIV – E Visa Category

(E-2 Visa)

The **E-2 visa** = a Treaty Investor visa that allows a foreign national to enter and work in the U.S. based on an investment in a U.S. business.

To qualify for an E-2 visa, the foreign national or a U.S. company-sponsor must:

- Be the national of a treaty investor country as classified by the U.S. State Department; Nationality of the company is determined by the nationality of the ultimate individual owners who own at least 50 percent of the company;
- Invest substantial capital in a bona fide enterprise in the United States; and
- Be actively involved in developing or directing the investment enterprise through at least 50 percent ownership or managerial control.

Employees of the treaty investor can also qualify for an E-2 if they:

- Hold a role which is or will be supervisory/executive or specialized in nature;
- Are essential to running the company; and
- Come from the same country as the primary E-2 applicant (the primary investor)/sponsoring company.

Spouses and children under 21 of E-2 visa holders can also seek E-2 status as dependents and spouses may apply for work authorization.

Both E1 and E2 visas allow for an initial stay of up to two years from the time of entry to the U.S., with extensions of up to two years. The number of extensions for both the E1 and E2 visas is unlimited, provided all conditions of the visa are still met.

Dual intent is allowed in certain circumstances.

NIV – J-1 Visa Category

(Student or Exchange Visitor Visa)

This visa category is for anyone outside the U.S. who wishes to take part in study and work-related exchange programs in America. Typically, J-1 visa holders are sponsored by an educational or non-profit institution.

The J-1 visa has 15 categories of eligible roles and/or program types:

1. Au Pair
2. Camp Counselor
3. College and University Student
4. Secondary School Student
5. Government Visitor
6. International Visitor
7. Physician
8. Professor
9. Research Scholar
10. Short-Term Scholar
11. Specialist
12. Summer Work Travel
13. Teacher
14. Trainee
15. Intern

The duration of stay on a J-1 visa depends upon the program or purpose of travel.

J-1 visa holders are often required to return to their home country after the completion of their J-1 program in the U.S. **Some [exchange visitors](#) with J-1 visas are subject to a two-year home-country physical presence requirement. It requires a J-1 visa holder to return home for at least two years before applying for a U.S. permanent resident status, changing status in the U.S., or obtaining a certain type of visa.**

This visa type does not allow for dual intent.

NIV – L-1 Visa Category

(Intracompany Transferee)

The L-1 visa is used for temporary intracompany transferees who work in managerial positions or have specialized knowledge. There are two main categories of L-1 visas: L-1A and L-1B.

The L-1A nonimmigrant classification enables a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its U.S. offices. It also enables a foreign company which does not have an affiliated U.S. office to send an executive or manager to the U.S. for the purposes of establishing an office in the U.S. If the U.S. employer has been doing business for more than 1 year, the L-1A visa is valid for an initial period of 3 years, with the ability to renew in increments of 2 years for a maximum of 7 years. If the U.S. company is new, the L-1A visa is valid for 1 year, with the ability to renew in increments of 2 years for a maximum of 7 years.

The L-1B classification enables a U.S. employer to transfer a professional employee with specialized knowledge relating to the organization's interests from one of its foreign affiliated offices to one of its U.S. offices. Like the L-1A, the L-1B also allows a foreign company which does not yet have a U.S. affiliate office to send a specialized knowledge employee to the U.S. to help establish one. The L-1B visa is initially valid for 3 years and can be renewed in 2-year increments for a maximum of 5 years. If the U.S. company is new, the L-1B visa is valid for 1 year, with the ability to renew in increments of 2 years for a maximum of 7 years.

To qualify for either an L-1A or an L-1B visa, the beneficiary must have worked at the abroad employer for at least one continuous year within the 3 years immediately before applying for the L-1 visa.

There must also be a qualifying relationship between the foreign employer and the intended U.S. employer. For the purposes of the L-1 visa, the qualifying relationship between the foreign employer and U.S. employer must be classified as either a parent, subsidiary, affiliate, branch or joint venture company.

Spouses of L-1 visa holders (L-2 visa holders) are eligible to apply for work authorization after they enter the U.S. Dual intent is allowed on L visas.

NIV – H-1B Visa Category

(Specialty Professionals)

The H-1B is a temporary nonimmigrant work visa that allows U.S. employers to hire foreign workers for specialized jobs (specialized occupations) which require at least a Bachelor's degree, its equivalent, or higher to perform. Specialized occupations are those that require the application of "a body of highly specialized knowledge" and the higher education degree must be directly related to the job which the foreign national is intended to perform.

Most H-1B visas are issued through a lottery system, known as the H-1B Cap Lottery or H-1B Lottery, and only 85,000 visas are available each fiscal year.

- 65,000 visas are issued to general H-1B applicants who meet the basic qualifications
 - o 6,800 of these are reserved for citizens of Chile or Singapore
- 20,000 visas are reserved for those foreign nationals who have advanced degrees (Master's or Ph.Ds) from U.S. universities

****Those applicants with higher degrees are given preference**

H-1B visas have a maximum stay of 6 years in the U.S. before the foreign national 'caps out.' Time spent in L-1 status also counts against the H-1B maximum stay.

Before an employer can petition for an H-1B worker, they need to submit a Labor Condition Application (LCA) with the Department of Labor (DOL). Employers must attest to four basic employment conditions intended to protect American workers:

- 1) **Wages:** the H-1B worker will be paid higher than prevailing or actual wage paid to similarly employed workers
- 2) **Working conditions:** employing foreign worker will not affect the wages or working conditions of similar U.S. workers
- 3) **No strike or lockout:** no strike, lockout, or work stoppage is occurring at the time of filing
- 4) **Notice:** the employer must provide notice to its employees that the LCA was filed

Dual intent is allowed on the H-1B.

NIV – O-1 Visa Category

(Persons of Extraordinary Ability)

The O-1 visa is reserved for those foreign nationals who are at the top of their respective fields and who are considered individuals of extraordinary ability in the areas of science, arts, business, education or athletics. The O nonimmigrant classification has two sub-categories: O-1A and O-1B.

The O-1A is for individuals with extraordinary ability in the sciences, education, business or athletics (not including the arts, motion pictures or television industries). Famous O-1A visa holders include Melania Trump and David Beckham.

The O-1B is for individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry. Celebrities admitted on the O-1B visa include Justin Bieber, Rihanna, Iggy Azalea, Lilly Allen, Thomas Eje and Piers Morgan.

To qualify for the O-1, an individual must demonstrate extraordinary ability (a level of expertise indicating the person is one of the small percentage who have risen to the very top of their field) by sustained national or international acclaim and must be coming temporarily to the U.S. to continue work in the area of extraordinary ability.

The O-1 can be granted for an initial stay of up to 3 years, then extended in 1-year increments for as long as it takes to complete the intended event or activity for which the foreign national was admitted.

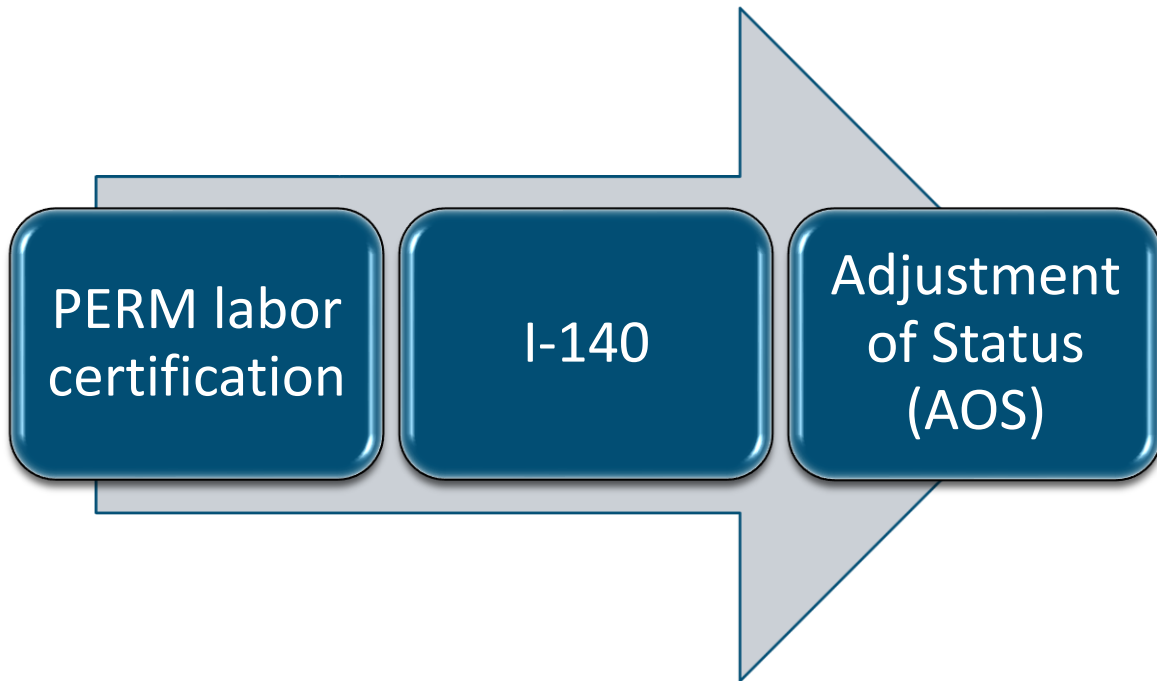
Dependents of the principal O-1 visa holder (O-3 holders) are not eligible for work authorization.

Dual intent is allowed on the O visa in certain circumstances.

Employment-Based Immigrant Visas

Like the employment-based non-immigrant visas, the employment-based immigrant visas also require an employer sponsor or offer of permanent employment.

Immigrant Visa Process



Steps to obtaining a Green Card:

- 1) PERM (Program Electronic Review Management) – the system used for obtaining a Labor Certification and the first step for certain foreign nationals to obtain an employment-based green card in the EB-2 and EB-3 preference categories.
- 2) Form I-140, Immigrant Petition for Alien Worker is the form submitted to USCIS by a prospective U.S. employer to petition an alien to work in the U.S. on a permanent basis.
- 3) Adjustment of Status (AOS) is the application submitted to USCIS to register permanent residence or adjust status. It's used by a foreign national in the U.S. to apply for lawful permanent resident status, also known as a Green Card.

**** Depending on the applicant's country or origin (known as chargeability), this process can take an average of 2 years or more to complete all the steps and be issued a green card.**

Labor Certification and PERM

PERM labor certifications are required prior to filing an immigrant petition in the EB-2 or EB-3 preference category.

A labor certification is a test of the job market to make sure that minimally qualified U.S. workers get available jobs before any foreign workers. In short, the PERM process requires the U.S. employer to conduct a series of recruitment activities designed to test the labor market to determine whether there are sufficient willing and able U.S. workers for the job offered to a foreign national.

- The U.S. employer conducts a job search for able, willing, qualified and available U.S. workers
- This process is heavily influenced by the state of the U.S. economy (i.e., unemployment rate, layoffs, strikes, etc.)
- In the event a minimally qualified U.S. worker is found, the company cannot submit the labor certification if the U.S. worker is rejected, but the company is not required to hire that worker either.

Documentation and information required to start a PERM case include:

- i. Job description and employer's minimum education and experience requirements for the position
- ii. Evidence the foreign national meets the requirements of the job description
- iii. Obtaining the prevailing wage determination (PWD)
- iv. Recruitment activities (job advertisements)
 - Recruitment activities must take place between 30-180 days prior to the filing of the PERM application
 - The job order must be placed with a state workforce agency (SWA)
 - Job postings must also be placed in two Sunday newspaper ads
 - For professional positions, job postings must also be placed in at least 3 additional recruitment sources (i.e., employer's website, job fairs, job search websites, on-campus recruitment, trade or professional organizations, employee referral programs, campus placement office postings, local & ethnic newspapers, or radio and TV ads)
- v. Preparing the audit file (evidence of the above activities and qualifications)
- vi. Preparing Form ETA-9089

**** Employer contact with responding job applicants must be in good faith and include interviews following normal company procedure if the applicant meets minimum qualifications.**

I-140

The most common employment-based immigrant visas use the same USCIS form, the I-140, and they fall into three main preferences or categories: EB-1, EB-2, and EB-3.

| EB-1 - Priority Workers | EB-2 – Advanced degree professionals & exceptional ability | EB-3 – Professional, Skilled & Unskilled Workers |
|--|--|---|
| <ul style="list-style-type: none">A. Persons of extraordinary abilityB. Outstanding professors and researchersC. Multinational Executives & Managers <p>EB-1 sub-categories are known as EB-1A, EB-1B, and EB-1C.</p> <p>The EB-1 category does NOT require a PERM labor certification</p> | <ul style="list-style-type: none">• The job must require at least a Master's degree or equivalent (or Bachelor's degree + 5 years of progressive experience in the relevant field)• PERM required but may be waived if person meets the "National Interest" qualifications (this EB-2 sub-category is known as the NIW) | <ul style="list-style-type: none">• PERM required• Significant backlogs for foreign nationals of certain countries |

Two additional preference categories, EB-4 and EB-5 are less commonly used.

EB-4 = Certain Special Immigrants (There are 19 sub-categories for this preference)

- The applicant must have an approved I-360 form, with the exception of certain employees or former employees of the U.S. government abroad
- An example of foreign nationals in this category includes Iraqi and Afghan interpreters who worked with the U.S. armed forces abroad.

EB-5 = Immigrant Investors (This is for capital investment by foreign investors in new commercial enterprises in the U.S. which provide job creation)

- To qualify, a foreign national must invest (without borrowing) a minimum capital dollar amount of USD \$1 million or \$500,000 in a high-unemployment or rural area of the U.S.

EB-1A – Extraordinary Ability

The qualifications for this IV category mirror those of the O-1A non-immigrant visa.

Foreign national must be able to demonstrate extraordinary ability in the sciences, arts, education, business or athletics through sustained national or international acclaim.

To demonstrate extraordinary ability, the foreign national must provide evidence that they have been awarded a one-time achievement (major internationally recognized award) or meet at least **3 of 10** criteria:

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
- Evidence of membership in associations in the field which demand outstanding achievement of their members
- Evidence of published material about the foreign national in professional or major trade publications or other major media
- Evidence the foreign national has been asked to judge the work of others, either individually or on a panel
- Evidence of the foreign national's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
- Evidence of the foreign national's authorship of scholarly articles in professional or major trade publications or other major media
- Evidence the foreign national's work has been displayed at artistic exhibitions or showcases
- Evidence of the foreign national's performance of a leading or critical role in distinguished organizations
- Evidence the foreign national commands a high salary or other significantly high remuneration in relation to others in the field
- Evidence of the foreign national's commercial successes in the performing arts

The EB-1A category does not require employer sponsorship, allowing a foreign national to self-petition without an offer of permanent employment.

**** Premium Process (15 days) is available for this IV category.**

EB-1B – Outstanding Professor or Researcher

Foreign nationals petitioning for this visa category must demonstrate international recognition for their outstanding achievements in a particular academic field. They must also have at least 3 years of experience in teaching or research in that academic area and must be entering the U.S. in order to pursue tenure or tenure track teaching or a comparable research position at a university, institution of higher education or private employer with a distinguished reputation.

To demonstrate outstanding achievements, foreign nationals must provide an offer of employment from the prospective U.S. employer (the petitioning company) and meet at least **2 of 6** possible criteria:

- Evidence of receipt of major prizes or awards for outstanding achievement
- Evidence of membership in associations that require their members to demonstrate outstanding achievement
- Evidence of published material in professional publications written by others about the alien's work in the academic field
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
- Evidence of original scientific or scholarly research contributions in the field
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

A private employer must show documented accomplishments and that it employs at least three full-time researchers.

**** Premium Process (15 days) is available for this IV category.**

EB-1C – Multinational Managers

The qualifications and criteria for the EB-1C mirror those of the L-1A non-immigrant visa

Like the L-1A, the petitioning employer must be a U.S. employer and intend to employ the foreign national in a managerial or executive capacity. The petitioner must also have been doing business in the U.S. for at least 1 year as a legal entity with a qualifying relationship to the entity which employed the foreign national abroad in a managerial or executive capacity.

Unlike the L-1A, the EB-1C does not allow for a foreign national coming to the U.S. with the intent to establish an office in the U.S.

As part of the application process, the U.S. employer must be able to demonstrate a continuing ability to pay the offered wages as of the petition priority date. This evidence can consist of company annual reports, federal income tax returns or audited financial statements.

See the L-1A for more information regarding the EB-1C qualifications and criteria for both petitioning companies and beneficiaries.

Premium processing is now available for the EB-1C I-140s, but unlike normal Premium Processing, it is processed in 45 days. It is also available for EB-2 PERM petitions and EB-3 petitions, but these are adjudicated in the normal 15 days.

Premium processing service requires an extra fee paid to USCIS to expedite the adjudication of certain petition types, most often the adjudication is in 15 days rather than for the duration of the normal processing time, which can exceed a year in certain cases. As mentioned above, this 15-day time frame does not apply to the EB-1C, nor does it apply to the EB-2 NIW which is also 45 days.

EB-2 – Advanced Degree or Exceptional Ability & National Interest Waiver

(PERM I-140/I-140 based on Labor Conditions & NIW)

In order to be eligible for this category of permanent worker visas, the foreign national is required to obtain an approval of a labor certification (PERM) and must meet the basic criteria depending on the sub-category.

- 1) **Advanced Degree:** the foreign national must have an advanced degree or its equivalent, which is a bachelor's degree plus at least 5 years of progressive work experience in the relevant field.

➔ Documentation to demonstrate this includes:

- An official academic record showing possession of a U.S. advanced degree (or foreign equivalent degree); or
- An official academic record showing possession of a U.S. bachelor's degree (or a foreign equivalent) and letters from current or former employers showing at least 5 years of progressive work experience in a relevant field after earning the bachelor's degree.

- 2) **Exceptional Ability:** the foreign national must be able to show exceptional ability in the sciences, arts, or business which will greatly benefit the U.S. economy, cultural or educational interests, or welfare in the future. Exceptional ability means "a degree of expertise significantly above that ordinarily encountered in the sciences, arts or business."

➔ Evidence for this classification is more subjective and is highly dependent upon the individual foreign national's particular qualifications and circumstances.

Criteria for the EB-2:

- Official academic record showing the foreign national has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning
- Letters documenting at least 10 years of full-time experience in the foreign national's occupation
- A license to practice the foreign national's profession or certification for their profession or occupation
- Evidence the foreign national has commanded a salary or other remuneration for services that demonstrates their exceptional ability

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- Membership in a professional association(s)
 - Recognition for the foreign national's achievements and significant contributions to their industry or field by their peers, government entities, professional or business organizations
 - Other comparable evidence of eligibility is also acceptable.

** Premium Processing (15 days) is available for this category of IV petition.

EB-2 - National Interest Waiver (NIW)

This category of the EB-2 pertains to foreign nationals who are requesting that the labor certification be waived because it is in the interest of the U.S. The jobs that qualify for a national interest waiver are not defined by statute, so NIW petitions are usually granted to those who have exceptional ability (see above) and whose employment in the U.S. would greatly benefit the nation. Foreign nationals seeking an NIW may self-petition (they do not need an employer to sponsor them) and do not have to have an existing or prospective job offer.

In addition to providing evidence of an advanced degree or exceptional ability (described above), the foreign national also must demonstrate that it is in the national interest for USCIS to waive the requirement of a job offer and thus the labor certification by meeting the 3 NIW criteria:

- The proposed endeavor has both substantial merit and national importance.
- The foreign national is well positioned to advance the proposed endeavor.
- It would be beneficial to the United States to waive the requirements of a job offer, and thus the labor certification.

** Premium Processing (45 days) is available for this category if IV petition.

EB-3 – Professional, Skilled Worker or Other Worker

A foreign national may be eligible for this immigrant visa preference category if they are a **skilled worker, professional, or other worker**.

- “Skilled workers” are persons whose jobs require a minimum of 2 years training or experience, not of a temporary or seasonal nature. The skilled worker must meet the educational, training, or experience requirements of the job opportunity. Relevant post-secondary education may be considered as training.
- “Professionals” are persons whose job requires at least a U.S. baccalaureate or foreign equivalent degree and are a member of the professions.
- The “other workers” subcategory is for persons performing unskilled labor requiring less than 2 years training, education, or experience, not of a temporary or seasonal nature.

| Sub-category | Evidence or Qualifications |
|------------------------------|---|
| Skilled Workers | <ul style="list-style-type: none">• Possess at least 2 years of job experience, education, or training that meets the job requirements specified on the labor certification.• Relevant post-secondary education may be considered as training.• Must be performing work for which qualified workers are not available in the United States. |
| Professionals | <ul style="list-style-type: none">• Possess a U.S. bachelor’s or foreign equivalent degree, and that a BA degree is the normal requirement for entry into the occupation.• Must be performing work for which qualified workers are not available in the United States. |
| Unskilled or “Other” Workers | <ul style="list-style-type: none">• Must demonstrate the ability to perform unskilled labor (requiring less than 2 years training or experience), that is not of a temporary or seasonal nature.• Must be performing work for which qualified workers are not available in the United States. |

**** A labor certification and job offer are required for each of the sub-categories**

*****Premium Processing (15 days) is available for this IV category of petition.**

Family-based Visas (both NIV and IV)

Family-based visa allow the fiancé(e), spouse, immediate family member, or more distant family member of U.S. citizens or Legal Permanent Residents to move to the U.S.

K Non-Immigrant Visas (K-1, K-2, K-3 & K-4)

The K nonimmigrant visa allows U.S. citizens (the petitioner) to request that the beneficiary (a fiancé(e), spouse, and child derivatives of the fiancé(e) or spouse) enter the U.S. in non-immigrant status then adjust their status in the U.S. (obtain green card) without being subjected to consular processing abroad.

K-1 = Permits the foreign-citizen fiancé(e) to travel to the U.S. and marry his or her U.S. citizen sponsor within 90 days of arrival, then apply for adjustment of status to a permanent resident (LPR), commonly known as a green card.

- Both the U.S. citizen and the K-1 visa applicant must have been legally free to marry at the time the petition was filed and must have remained so thereafter. The marriage must be legally possible according to laws of the U.S. state in which the marriage will take place.
- K-1 visas are available to same-sex couples, but they must meet the same requirements as opposite-sex couples
 - i. The couple has met face to face in person within the last two years
 - ii. The couple plans to marry within 90 days of the foreign national's entry to the U.S.
 - iii. The foreign national partner is not inadmissible to the U.S. for health, crime, security, past unlawful presence, or other such reasons

K-2 = Allows the children of a K-1 fiancé(e) visa holder (under the age of 21 and unmarried) to enter the U.S. until an immigrant visa/green card is available to them.

K-3 = This is a nonimmigrant visa for a foreign-citizen spouse of a U.S. citizen and is intended to shorten the separation time between the foreign national spouse and U.S. citizen spouse. This enables the foreign national spouse to enter the U.S. in nonimmigrant status and await approval of the immigrant visa/green card.

- Spouse is defined as "a legally wedded husband or wife." Same-sex spouses of U.S. citizens and LPRs, along with their minor children, are also eligible for the same immigration benefits as opposite-sex spouses

K-4 = This visa allows the under 21 and unmarried children of a K-3 spouse visa holder to enter the U.S. and wait for the availability of an immigrant visa/green card

Family-based Immigrant Visas

There are two types of family-based immigrant visas, both filed using Form I-130:

- 1) **Immediate Relative (IR)** – these visas are based on a close family relationship with a U.S. citizen, such as spouse, child or parent.
 - The number of immigrant visas in this category is not limited each fiscal year
 - Sub-categories of immediate relative include:
 - o IR1- immediate relative category for spouse of a US citizen
 - o IR2 - category for unmarried child of US citizen
 - o IR3 - category for orphan adopted abroad by a U.S. citizen
 - o IR4 - category for orphan to be adopted in the United States by a U.S. citizen
 - o IR5 - immediate relative category for parents of U.S. citizens who are at least 21 years old
- 2) **Family Preference (FP)** – these visas are for specific, more distant family relationships with a U.S. citizen and some specified relationships with an LPR.
 - The number of immigrant preference visas issued in this category is limited each fiscal year.
 - o F1 - category for over 21 unmarried sons and daughters of U.S. citizens
 - o F2A - category for spouse and children under 21 of LPR
 - o F2B – category for unmarried adult sons and daughters of LPR
 - o F3 - category for married sons and daughters (any age) of U.S. citizens
 - o F4 - category for brothers and sisters of adult U.S. citizens

U.S. citizens can file an immigrant visa petition for their:

- Spouse
- Son or daughter
- Parent
- Brother or sister

U.S. Lawful Permanent Residents can only file an immigrant visa petition for their:

- Spouse
- Unmarried son or daughter

Adjustment of Status, Legal Permanent Residency & Citizenship

Adjustment of Status (AOS) is the final step in the Green Card process and comes after an approved I-140 OR I-130. Legal permanent residency is the result of an approved AOS, and citizenship can come after a set period of time as an LPR

Adjustment of Status – Green Card

Adjustment of status (AOS) is the process of applying for a green card from within the U.S. and allows the foreign national to remain in the U.S. while their application is being processed, even if the underlying visa has expired.

The AOS application is based upon the foreign national having an approved I-140 (employment-based immigrant visa petition) or an approved I-130 (family-based immigrant visa petition). However, USCIS allows concurrent filing (filing the AOS application prior to the approval of the underlying immigrant visa petition) in certain categories and circumstances, such as:

- Foreign nationals from certain originating countries (aka country of chargeability), the I-140 or I-130 can be filed concurrently with the AOS application.
 - o Eligibility for concurrent filing changes month to month and can be found on the Department of State website which publishes the Visa Bulletin (<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>)
- Foreign nationals petitioning for one of the first three employment-based preference groups (EB-1, EB-2, & EB-3) who are from a country of chargeability which is current on the Visa Bulletin (meaning there is a visa number available to them).
- Immediate relatives of U.S. citizens living in the U.S.
- Special Immigrant Juveniles if an EB-4 visa number is immediately available and we have jurisdiction over the application to adjust status;
 - o Self-petitioning battered spouse or child if:
 - o The abusive spouse or parent is a U.S. citizen; or
 - o If an immigrant visa number is immediately available;
- Certain members of the armed forces applying for a special immigrant visa under Section 101(a)(27)(K) of the Immigration and Nationality Act (INA); and
- Special Immigrant International Organization Employees or family members.

Concurrent filing **cannot** occur in consular processed cases, as the immigrant petition is filed with USCIS and the application for an immigrant visa is filed with the Department of State.

A typical AOS application package usually contains multiple USCIS forms:

- 1) Form I-485 – this form is the application to adjust status (green card)
- 2) Form I-131 – this form, called advanced parole, is used to obtain permission to travel outside the U.S. while the AOS application is pending.
- 3) Form I-765 – this form is used to apply for work authorization while the AOS application is pending. It allows a foreign national to continue working if their underlying nonimmigrant status expires while the AOS is still pending.

Once an AOS application has been approved and a green card has been issued, the foreign national (now known as an LPR) no longer needs separate work authorization since the green card is evidence of employment authorization.

The documents required to file the AOS application vary depending on the type of underlying immigrant visa (I-130 or I-140) upon which the AOS application is based.

The checklist of initial evidence required for Form I-485 can be found here <https://www.uscis.gov/i-485Checklist>, and typically includes documents such as birth certificates, marriage certificates, copies of passports, copies of lawful immigration status in the U.S., passport-style photos, and evidence of a job offer.

Visa Availability and Priority Dates

The U.S. Dept. of State determines the number of immigrant visas that can be issued to foreign nationals seeking to become LPRs (green card holders) each year.

- Immigrant visas for immediate relatives of U.S. citizens are unlimited and always available.
- Immigrant visas for family-based and employment-based preference categories are numerically limited and therefore are not always immediately available
 - o Family-based preference visas are limited to 226,000 visas per year.
 - o Employment-based preference visas are limited to 140,000 per year.
- Both categories are divided into several sub-categories, each of which receives a certain percentage of the overall visa numbers as prescribed by law. In addition, there are limits to the percentage of visas that can be allotted based on an immigrant's country of chargeability (usually the country of birth).

Prospective immigrants can find their **priority date** (the date that determines the foreign national's place in the green card line) in the box labeled 'received' on the I-797 receipt notice or approval notice of the corresponding petition. The waiting time before receiving an immigrant visa or adjusting status depends on the:

- Demand for and supply of immigrant visas.
- Per-country visa limitations; and
- Number of visas allocated for the foreign national's preference category.

The **Visa Bulletin** is a guide for issuing visas and is published by the DOS on a monthly basis. It summarizes the availability of immigrant visas and allows foreign nationals to check their place in the immigrant visa queue based on their petition category. The Visa Bulletin provides the most recent date for when a visa number is available for the different categories and countries for family-sponsored, employment-based, and diversity (lottery) visas.

A visa must be available before a foreign national can take one of the final steps in the process of becoming a lawful permanent resident. Because more prospective immigrants want lawful permanent residency than the limited numbers of immigrant visas allow, not everyone can immediately get an immigrant visa. How long a foreign national must wait depends on their priority date, preference category, and the country to which the visa will be charged (chargeability).

Citizenship / Naturalization

There are several factors to consider when determining eligibility for applying for U.S. citizenship, also called naturalization. The foreign national must meet the following qualifications:

- 1) At least 18 years of age
- 2) Be an LPR and have been issued a green card
- 3) Has been an LPR for 3-5 years (for those married to a U.S. citizen) or for at least 5 years for other LPRs
- 4) Has NOT been out of the U.S. for 30 months or more in the last 5 years before the citizenship application
- 5) Has NOT taken a trip out of the U.S. that lasted for 1 year or more (or 3 years if married to U.S. citizen) during the last 5 years before application
- 6) Has resided in the district or state in which the foreign national is applying for citizenship for the last 3 months before application submission
- 7) Can read, write and speak basic English
- 8) Knows the fundamentals of U.S. history and the form and principles of the U.S. government
- 9) Is a person of good moral character
- 10) Meets one of the following parameters:
 - (a) Is a female, OR
 - (b) Is a male registered with the Selective Services, OR
 - (c) Is a male who did not enter the U.S. under any status until after his 26th birthday, OR
 - (d) Is a male who has been in the U.S. between the ages of 18-26 but who did not register with the Selective Services and will send a 'Status Information Letter' from the Selective Services explaining why he did not register with his application,
 - (e) Is a male who was in the U.S. between the ages of 18-26 as a lawful nonimmigrant.
- 11) Has never deserted from the U.S. Armed Forces
- 12) Has never received an exemption discharge from the U.S. Armed Forces on the grounds that he is a foreign national
- 13) Is willing to perform either military OR civilian service for the U.S., if required by law.

Eligible foreign nationals must then:

- 1) Prepare Form N-400 Application for Naturalization and collect the necessary documentation needed to demonstrate eligibility for naturalization
- 2) Submit Form N-400 to USCIS and pay the filing fees
- 3) Attend the scheduled biometrics appointment (if required)
 - ➔ USCIS will send an appointment notice that will include the date, time and location for the biometrics appointment
- 4) Attend the interview scheduled on the next appointment notice and complete the interview
 - ➔ The interview will consist of an English test and a U.S. civics test
 - ➔ If either test is failed, USCIS will schedule another interview within 60-90 days of the first interview. If either test is failed for a 2nd time, the request for naturalization is denied.
- 5) USCIS will notify you of the decision via mail (and online if the N-400 was filed online)
- 6) If approved, receive a notice to participate in the naturalization ceremony and take the Oath of Allegiance

The information presented here is simply an overview of the many types of immigration matters we at Martensen Wright PC are equipped to handle.

If you are interested in learning more about any of the immigration matters covered in this brochure or want to learn more about how Martensen Wright PC can help your company with its business visa, green card, or even family-based visa needs, please contact us as info@usa-eurolaw.com or +1 916-448-9088.