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Immigration Guide

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Immigrating to the United States of America

Immigrating to the U.S.A. can be a lengthy and overwhelming process with multiple agencies involved. The USCIS (United States Citizenship and Immigration Services), DHS (Department of Homeland Security), NVC (National Visa Center), and U.S. Consulates and Embassies all work together to ensure you are qualified and safe to immigrate to the U.S.A. In some cases, immigration court is also involved where the respondent needs to appear before an immigration judge and prove why they should be allowed to remain in the U.S.A.

Millions of people per year are trying to immigrate to the U.S.A. and because of that, increased scrutiny on cases, increased concern for our national security, shortage of reviewing officers, among others, are all effects of this influx of immigrants. There are varying pathways a person can take to become a visa holder or green card holder. Which pathway a person should take depends on their specific goals and wants as each one varies with different requirements and outcomes.

Immigrant v. Non-immigrant Visas

There are two distinct categories of U.S. Visas: Immigrant and Nonimmigrant. The type of visa an individual should apply for is dependent on their specific wants and plans once they enter the U.S.A. Generally, Immigrant visas are for those who intend to live and work permanently in the U.S.A. Whereas Nonimmigrant visas are for those who intend to enter the U.S.A. on a temporary basis for either leisure/vacation, business, medical treatment, and/or temporary work. For an Immigrant visa, individuals typically apply through USCIS and for Nonimmigrant visas, individuals file their petitions via their respective U.S. Embassy or Consulate.

Despite these two distinct categories, there are a few visa options such as L-1 (intracompany transferee), H-1B (specialty occupation worker), K-1 (fiancé visa), O-1 (extraordinary ability), and E-2 (treaty investor) which are considered to be “dual intent” visas. This means that these foreign nationals holding such statuses may enter the U.S.A. on a temporary basis while also having the option to pursue permanent residency in the U.S.A.



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Common Immigrant Visa Classifications

Common Immigrant visa classifications include **family sponsored**, **employer sponsored**, and **self-sponsored** pathways to a Green Card.

Family sponsored options include a U.S. Citizen sponsoring their spouse, parent, child, or sibling for a Green Card. It also includes the option for a Green Card holder to sponsor their spouse or unmarried children under 21 years old for a Green Card.

Employer sponsored options include EB-2 (employment based second preference category) and EB-3 (employment based third preference category) pathways to a Green Card. For these petitions, one needs to ensure they have an employer who is willing to sponsor them for a Green Card and that they meet all the requirements to be eligible. Generally, the applicant needs to meet certain educational standards such as having at least a bachelor's degree plus 5 years of experience in their respective profession for EB-2 category; or if they do not have that kind of education or experience, they may qualify for an EB-3 category employment.

R-1 visas are for religious workers who hold the title of a priest and who have a religious organization willing to sponsor them.

EB-1C (certain multinational managers or executives), traditionally is the subsequent step after an L-1 sponsorship. For EB-1C, the employer who sponsored you for L-1A is the one generally continuing your sponsorship for a Green Card. They must demonstrate the continuing ability to pay you the offered wage and the applicant must demonstrate their continued skills and abilities to fulfill their role as a manager or executive of the organization.

Self-sponsored options include EB-1 (employment based first preference category) and EB-2 NIW (employment based second preference category with national interest waiver). Such categories have a higher standard of proof to overcome given that they do not require a sponsoring employer. Each category has specific requirements that need to be met by the applicant in order to be eligible to apply. For example, within EB-1, there are different categories available: EB-1A (extraordinary ability) and EB-1B (outstanding professors and researchers). To qualify for EB-1A, the applicant must prove they have an extraordinary ability in the arts, sciences, education, business, or athletics through national or international praise. This can be shown by meeting at least 3 of the 10 eligibility criteria listed on the USCIS' website. For your convenience, here is a brief list of the 10 eligibility criteria: *Receipt of lesser nationally or internationally recognized prizes or awards of excellence; Membership in associations which demand outstanding achievements of their members; Published material about you in professional or major trade publications/media; You have been asked to judge the work of others either individually or on a panel; You have contributed your original scientific/scholarly/artistic/business related work; Authored scholarly articles in*



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professional or major trade publications/media; Your work was displayed at artistic exhibitions or showcases; You have held a leading critical role in distinguished organizations; Command a higher salary as compared to your peers; Evidence of your commercial success in the performing arts.

To qualify for EB-1B, the applicant must demonstrate 2 out of the following 6 eligibility criteria: *Receipt of major prizes or awards for outstanding achievement; Membership in associations which demand outstanding achievements of their members; Published material about you in professional or major trade publications/media; You have been asked to judge the work of others either individually or on a panel; You have contributed your original scientific/scholarly work to the field; and/or evidence of authorship of scholarly books or articles in the field.* These qualifications can be proved through letters of recommendation from your peers or superior professionals in your field who are familiar with your work. Include your education documents proving your highest level of education completed. Include a copy of your resume and a cover letter giving an overview of your qualifications and experiences over the years. Include copies of your published articles or articles published about you. The more evidence you provide, the better. It is recommended to try and argue you meet at least one additional eligibility requirement than as required for the extra cushion and support for your case.

With regards to EB-2 NIW, there is a test which needs to be met in order to be eligible for this pathway. According to the *In re New York State Department of Transportation* case dated August 7, 1998, a precedent was created to adjudicate EB-2 NIW cases through a three prong test: (1) the applicant must seek employment in an area that has substantial intrinsic merit; (2) the applicant must demonstrate that the proposed benefit to be provided will be national in scope; and (3) the applicant must demonstrate that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the waiver applicant by making available to U.S. workers the position sought by the waiver applicant. Essentially, the applicant needs to prove they have the capability to advance their proposed endeavor in the U.S.A. and the proposed endeavor will not just benefit a specific region of the U.S.A., but rather benefit the nation as a whole. The applicant must also prove why USCIS should grant them an EB-2 NIW and why they deserve to forego the usual EB-2 pathway to a Green Card.

Processing Times for Immigration Cases

The processing times vary from one pathway to another and from one case to another. USCIS has an average processing predictor on their website which applicants can refer to. The applicant simply has to indicate the type of application they filed and the location of



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the service center where the application was filed and the system will provide an average processing time for the filing. Here is the link: <https://egov.uscis.gov/processing-times/> .

While USCIS can give you an average processing time, use this as a general idea of how long it could take for your immigration to be processed. Realistically, processing times vary from case to case. For example, our office has had a spousal sponsorship application processed within 3-4 months for one couple, whereas for another couple, it took closer to 8-9 months. Your case may take longer to process, or even shorter. Through it all, stay patient. Some pathways even have premium processing available where if you pay an additional fee, USCIS must provide you with a decision on your case within a certain number of days. Ask your Attorney about this option!

Applying for your U.S. Citizenship

Upon becoming a green card holder and completing at least three (3) years for marriage-based green cards or five (5) years for all others, one can apply for their U.S. Citizenship (yay!) as long as they fulfill all the requirements which include but are not limited to the following:

- (1) Good moral character
- (2) Proficient in English and U.S. Civics
- (3) Continuous Residence in the U.S.A.
- (4) Physical Presence in the U.S.A.
- (5) Lived at least three (3) months in your current place of residence
- (6) Allegiance to the U.S.A.

Are You in Need of Immigration Help? Contact our Law Office!

The Law Office of Sovmya George, PLLC is here to listen to your story, explain the viable immigration options for you, and speak with you regarding the next steps. With us, every client matters, and every case is fought with purpose. Feel free to contact us via phone at [972-905-0948](tel:972-905-0948) or email admin@lawofficesg.com, or fill out our contact page on our website at www.lawofficesg.com and we'd be delighted to speak with you.