

# OUR PRACTICE

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## Permanent Paths and Processing

### Permanent Residence

Permanent residence is the ultimate goal of U.S. immigration. It is a status evidenced by the coveted and oft-counterfeited "Green Card," which ironically is no longer green. A permanent resident may remain indefinitely in the U.S., work without limitation, and travel in and out of the U.S. without visas anymore. Permanent residence also entitles the holder to sponsor an alien spouse or children for permanent residence, to help alien relatives obtain waivers to avoid removal or obtain admission, to receive certain welfare benefits, to enjoy more constitutional protections and to seek naturalization to U.S. citizenship after a time.

### Paths

The essential step in becoming a permanent resident is demonstrating that you are one of the types of people the United States has designated to be eligible. It is not just about how badly you want it, or even how generally deserving you may be.

Congress has set up seven main paths to permanent residence, some of which contain numerous sub-categories. We summarize them below, and you can click on the titles to read more about most of them.

**Employment Based.** Most often, this involves showing there are no minimally qualified U.S. workers available for a specific job ("labor certification"). But there are many other categories for aliens with "extraordinary ability" in their field, outstanding professors and researchers, managers and executives transferring within a multinational business, workers with advanced degrees or exceptional ability whose immigration is in the "national interest," college teachers chosen competitively, religious workers and ministers, and investors.

**Family Based.** A U.S. citizen at least 21 years old may sponsor a parent, spouse or child without backlogs, or sponsor siblings with long backlogs. A permanent resident may sponsor a spouse or child, and the backlog depends on the type of relationship and the sponsoree's place of birth.

**Lottery.** Amazingly, the U.S. gives permanent residence to 50,000 people a year based initially on a one-page application sent to a special address each October. People born in the countries who send the most immigrants otherwise are not eligible.

**Asylum/Refugee.** Someone who reasonably fears persecution on grounds of actual or imputed race, religion, national origin, social group or political opinion may process for limited spots as a "refugee" from outside the U.S. or may seek "asylum" from within the U.S.

**Cancellation of Removal.** Someone already facing an Immigration Judge (i.e., back to the wall) may qualify for permanent residence rather than be removed based on having lived ten years in the U.S. (seven years as a permanent resident) before removal proceedings started, good moral character, and "extremely unusual hardship" to a citizen or permanent resident parent, spouse or child. A neat trick, but don't try this at home!

**Hodge Podge.** Congress has also made some special (differing) arrangements for certain persons from Cuba, Nicaragua, former Soviet Union, Vietnam, Laos, Cambodia, Poland, Hungary, Haiti, Guatemala and El Salvador. There are also special arrangements for children who become dependent upon a court for long-term foster care, U.S. government employees with 15 years of service, certain employees of international

organizations (like UN and NATO), soldiers with 12 years active U.S. duty and certain broadcasters (like Radio Free Europe).

**Family Members.** In most cases above (but of course not all), permanent residence can be derived almost automatically by the "principal alien's" spouse and unmarried children under age 21, as long as the relationship was created before the "principal alien" became a permanent resident. A spouse, stepchildren, and adopted children acquired later must be sponsored separately (see above). Biological children born afterward normally are born in the U.S. and are citizens, but those born abroad usually become permanent residents when they return with their permanent resident mother before age 2.

Waiting lists of various kinds apply to many paths. Waits for "visa numbers" for family and employment based categories and for lottery winners are reported by the State Department in its Visa Bulletin, based on the date when the first paper involved was filed or when the lottery registration was selected, plus the country of birth. The Visa Bulletin only shows when the people currently at the front of the queue got in it. It does not show how long someone can expect to wait by getting sponsored in one of the categories today, because since the current "cutoff date" more or less people may have been joining the queue than there are annual spots in the relevant category. The government has published some information suggesting that the waiting lists are getting significantly longer, but there is substantial attrition in long lines through death, loss of interest in immigrating, etc. Spots for refugees to be brought from abroad, for certain Chinese asylum applicants in the U.S., and for potential recipients of "cancellation of removal" in immigration court are tracked, but the government unfortunately does not publish the current waiting periods.

## Processing

The last step in obtaining permanent residence, after showing that someone is generally eligible and waiting through any applicable backlog, is to show the government that the person is not within a category of people considered to be inadmissible to the United States. This is done through one of two procedures:

- **Adjustment of Status** to permanent residence within the U.S. This can include "Section 245(i) Pay-to-Stay" applications.
- **Immigrant Visa Processing** through a U.S. consulate abroad, followed by entry.

Most people who are in the U.S. already and who fit the complex requirements for adjustment of status use that method, but it is not always best to do so. Common reasons to choose visa processing instead include faster processing abroad (in some types of cases), the need to live abroad while awaiting approval, and the desire for family members presently abroad to immigrate simultaneously. The analysis of which method is best involves complex, case-specific considerations in which immigration lawyers are particularly useful. The difficulty of switching from adjustment to visa processing makes good counsel essential to the decision.

## How We Can Help

Baker Donelson's Immigration Group helps foreign nationals and their employers figure out and pursue the most efficient path(s) to permanent residence. Some of those paths are fairly elaborate, but our knowledge of the processes, and their constant changes, allow us to obtain a faster result. Sometimes we work on more than one path at a time for the same person and see which one works out first. We help obtain and maintain temporary status and interim work and travel authorization in the meantime. We seek expedited processing where warranted. We help people with problem cases obtain waivers and other relief. We defend permanent residents in removal and other proceedings. We help permanent residents and citizens sponsor their relatives. We keep up with all the constant changes to the rules on who can become a permanent resident and how, so we can help you make the most of your opportunities.