

Strategies to Remain in the U.S. for those whose path to a Green Card is Significantly Delayed by EB-4 Retrogression

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In April 2023, the Employment-Based Fourth Preference immigrant visa (EB-4) category, which includes religious workers, certain broadcasters, certain retired officers or employees of a G-4 international organization, and their family members, retrogressed substantially to September 2018. Please refer to our [previous blog](#) about why this retrogression happened. A little more than a year later, there has been some progress. Based on the [Final Action Chart of the August 2024 Visa Bulletin](#), individuals who filed an I-360 petition on January 1, 2021, or prior to this date, would be able to file an application for lawful permanent residence.

There are only 9,940 visa numbers allocated to the EB-4 category per year. Based on how many petitions are currently pending, experts predict that individuals with an approved I-360 petition may have to wait about 10 years before they can file an application for lawful permanent residence, though there has been faster movement on the visa bulletin than expected. For those individuals who filed an application for lawful permanent residence concurrently with their Form I-360, they could stay in the United States with work authorization and a travel document until their priority date becomes current.

This article outlines the nonimmigrant and immigrant options available for certain retired officers or employees of a G-4 international organization, certain broadcasters, and religious workers while the backlog continues.

Nonimmigrant (for a temporary stay in the U.S.):

- **E-2:** This is a viable option if the foreign national is from a country that has an E-2 treaty with the United States and has the funds and managerial skillset to invest and develop the business in the United States.
- **F-1:** A student visa is a great option if the foreign national is interested in pursuing further studies (i.e., a full-time degree program) in the United States. A Curricular Practical Training (CPT)/Optional Practical Training (OPT) work authorization is normally available.



- **H-1B:** This employment visa is an option for foreign nationals who obtain a job where the employer requires a bachelor's degree in a specific field. The employer is required to pay at least the prevailing wage for the occupation in the place where the job is located, which does not include in-kind benefits, only salary. H-1B allocation is also limited by a quota of 85,000 visas (combining bachelor's degree and master's degree cap) for each year (not including H-1B Cap-exempt category). Finally, the costs of the H-1B must be paid fully by the employer. There are visa types similar to H-1B, but only applicable to specific treaty countries with similar eligibility criteria. For example, E-3 is only available for Australians and H-1B1 are only available for Singaporeans and Chileans.
- **L-1:** This is a viable option for individuals who work for an organization that has a hierarchical structure where its entities and activities are controlled by an umbrella governing body or is a company with a qualifying relationship (branch, subsidiary, affiliate, etc.) abroad. This would require the applicant to transfer to the U.S. from a branch of the organization outside of the U.S., where they have been working for at least 1 of the past 3 years. The offered job must be managerial or specialized.
- **O-1:** This visa is for individuals with extraordinary ability (demonstrated to be among the small percentage at very top of their field) either in the sciences, education, business, or athletics, or in the arts, or extraordinary achievement in the motion picture or television industry (must have sustained national or international acclaim).
- **P-3:** A P-3 visa is a good option if a foreign national develops, interprets, represents, or teaches a unique or traditional ethnic, cultural, musical, or artistic performance or presentation.
- **TN:** This visa is only for citizens of Canada and Mexico who are offered a job on the occupation list under the NAFTA schedule. Examples of the jobs include accountant, scientist, economist, management consultant, and teacher.
- **U Non-Immigrant Status:** Foreign nationals who have been a victim of qualifying criminal activity in the United States, who suffered substantial physical or mental harm as a result, who cooperated with the authorities in the investigation or prosecution of the crime, may apply for this status.

Green Card (a permanent stay):



- **I-360 Special Immigrant Petition based Green Card:** G-4 Special Immigrant Retirees can pursue a U.S. green card by filing an I-360 petition if they meet the residence and physical presence while in G-4 visa status. This petition must be filed within 6 months of retirement. Because of the current backlog, this will still require a long wait to file for a green card application. Those who can stay in the U.S. in another visa category can ultimately file for the adjustment of status application when their priority date becomes current (their place in line for the green card comes to the front of the line) in the U.S. Those who cannot obtain another nonimmigrant visa to continuously stay in the U.S. will need to depart the U.S. and wait outside the U.S. until their priority date becomes current at which time they can apply for an immigrant visa at the U.S. consulate abroad to enter the U.S. as a green card holder.
- **PERM:** This alternative requires the employer to test the U.S. labor market in the geographical area where the job is offered to show that there is no willing, able, and qualified U.S. worker available for the proffered position. The employer is required to pay the prevailing wage for the occupation in the location of the job, which may pose an additional challenge.
- **National Interest Waiver (EB-2):** To qualify for this option, the foreign national must prove that future U.S. activities will have a substantial benefit to the United States, and they must show that they have an advanced degree or its equivalent or be a person of “exceptional ability.”
- **Individuals of Extraordinary Ability (EB-1):** This option is available to those foreign nationals who are at the top of their field and who are well recognized nationally or internationally for their sustained achievements. They must show that they have won a major award or prize such as a Nobel or Pulitzer or an Oscar or Grammy, or that they meet three of eight categories specified in the regulations, or that they possess “comparable evidence” if the listed categories do not apply.
- **Immigrant Investor (EB-5):** To qualify for this option the foreign national must invest \$1.05 million or \$800,000 in a targeted area and produce ten full-time positions for U.S. workers.
- **Family-Based Adjustment of Status:** For individuals who have an immediate relative such as a spouse, a son or daughter age 21 or older, or parent who is a U.S. citizen, their immediate relative could petition for them for lawful permanent residence. For individuals who have a spouse who is a lawful permanent resident, they would have to wait for their priority date to become current before they can apply for lawful permanent residence or they could also consular process. However, to be eligible to apply for lawful



permanent residence from within the United States, they would have to maintain lawful status.

- **Asylum**: Individuals who fear persecution if they return to their home country on account of their race, nationality, religion, political opinion, or membership in a particular social group may apply for asylum.
- **Diversity Visa Lottery**: Citizens of certain countries can apply for the Diversity Visa Lottery annually.

Questions? Email: info@grossmanyouth.com or [contact us](#).

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