

Client Flyer: Changes to EB-4 in the April 2023 Visa Bulletin

In the [April Visa Bulletin](#), the U.S. Department of State (DOS) announced changes in how it allocates green cards for the [Employment-Based Fourth Preference immigrant visa \(EB-4\) category](#), including religious workers, special immigrant juveniles, and diplomats, among others. This change significantly increases the wait times for an EB-4 immigrant visa from a few months to several years as of April 1, 2023, for most applicants.

Background

There is an annual numerical limitation on green card issuance. Employment-based (EB) green cards are allocated in five different preference categories. For example, religious workers are in the EB-4 preference category. Immigrant visas are further allocated based on nationality, as the law limits 7% of the visas being issued to one nationality. If the demand for immigrant visas from one nationality exceeds the 7% cap, then their immigrant visa availability dates are listed in separate columns in the Visa Bulletin. These dates are important because it signals when an EB-4 applicant with an approved Form I-360 petition may proceed to apply for their immigrant visa or adjust their status to permanent residence. For more information please see [Visa Bulletin: Understanding the Basics](#).

What changed?

Until recently, visa availability for those born in Honduras, El Salvador, and Guatemala were listed in a separate column on the Visa Bulletin for employment-based immigrant visas because demand exceeded the 7% limitation in the EB-4 category. Based on this calculation, the immigrant visa availability date for EB-4 applicants from those countries was March 15, 2018, while visa availability from individuals from other countries ranged between 2020-2022. This resulted in a wait time of many years for religious workers from those three countries, whereas for the rest of the world, there was usually no wait until late 2022 (when the wait stretched to approximately a year).

In March 2023, DOS decided that it had made a legal mistake in separating these three countries from the rest of the world for purposes of visa availability because, while their visa demand exceeded the 7% limitation for EB-4, it did not exceed the limitation in overall usage. Therefore, the three countries were added back to the rest of the world demand and the available visas were reallocated across the EB-4 category. The result is that immigrant visa availability for all EB-4 visa applicants retrogressed to September 2018, regardless of their country of birth.

©2023 American Immigration Lawyers Association

AILA is the national bar association of immigration lawyers comprised of over 16,000 members located in every U.S. state and worldwide.

How does this impact my case?

Those EB-4 applicants who have already filed an adjustment of status (AOS) application can remain in the United States even though they are no longer eligible to obtain a green card. USCIS will hold their file until the date on the Visa Bulletin reaches their priority date. When this occurs, USCIS will approve the green card. Until then, AOS applicants are eligible to receive extensions of their employment and travel authorization.

Nonimmigrants, such as nonimmigrant religious workers (R-1), who have not yet filed an EB-4 AOS application may need to leave the United States when their status expires. For example, R-1s will need to leave the United States for one year when they exhaust their 5-year limit in R-1 status. After one year, they may be eligible for a new period R-1 status. During that time, they may be able to file their AOS application.

Please note that many Form I-360 petitions are specific to the position and petitioner. Thus, when the green card is approved, the religious worker must take the position listed in the Form I-360 petition even though they have been in that position for many years and may want to move to a different religious worker position.

What are my other options for remaining in the United States or obtaining a green card?

Depending on the individual circumstances, a religious worker may be eligible for other nonimmigrant classifications such as H-1B or L-1. In addition, a religious worker could also seek a green card via the PERM process, which is much more complex and requires the organization to conduct recruitment for the job and pay the prevailing wage. You should speak with your immigration attorney about viable alternatives.

How can I bring about changes to the system?

The answer is ADVOCACY!!! Reach out to your congressperson (U.S. Senate and House of Representatives) to explain the impact these changes have on your ministry, and demand change to ensure that applicants are not falling out of status or being forced to leave the United States. For example, AILA supports the [Protect Vulnerable Immigrant Youth Act](#), which would address EB-4 visa availability.

You can look up your senators at www.senate.gov and congressperson at www.house.gov.

©2023 American Immigration Lawyers Association

AILA is the national bar association of immigration lawyers comprised of over 16,000 members located in every U.S. state and worldwide.