



GROSSMAN YOUNG & HAMMOND
TRANSCENDING BORDERS™

4922 Fairmont Avenue, Suite 200
Bethesda, MD 20814
240.403.0913

8737 Colesville Road, Suite 500
Silver Spring, MD 20910
301.917.6900

Religious Workers: Why can't you file for a green card right now if you have an I-360 approval?

The short answer

The Department of State (DOS) [recently announced](#) changes to the allocation of green cards for the [Employment-Based Fourth Preference immigrant visa \(EB-4\) category](#), which includes religious workers. These changes significantly increased the wait time for most applicants from months to years, as of April 1, 2023.

The changes happened because DOS decided it had made a legal mistake in separating El Salvador, Guatemala, and Honduras from the rest of the world for purposes of visa availability. By redistributing green card demand from these three countries in with the rest of the world, the wait times for everyone increased.

The Long Answer


Retrogression of Religious Worker Green Card Category

The U.S. relies on a quota system to determine the number of green cards issued each year. Green cards fall under different classifications, each with its own quota. Religious workers fall under EB-4 – [Employment-Based 4th preference](#) – along with Special Immigrant juveniles, diplomats, and others.


The U.S. government further allocates immigrant visas (green cards) based on nationality. Nationalities with exceedingly high demand for green cards are separated out into their own categories in the Visa Bulletin (see below Figures). Until recently, Honduras, El Salvador, and Guatemala were grouped together as one nation category in the Visa Bulletin for EB-4 due to the high demand from these countries. See Figure 1.

This meant religious workers from those three countries often faced lengthy wait times for green cards, while the rest of the world rarely faced wait times over a year under EB-4.

Figure 1) Before April 1, 2023.




Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	01FEB22	C	01FEB22	C	C
2nd	01NOV22	08JUN19	01NOV22	08OCT11	01NOV22	01NOV22
3rd	C	01AUG18	C	15JUN12	C	C
Other Workers	01JAN20	01JUL14	01JAN20	15JUN12	01JAN20	01JAN20
4th	01FEB22	01FEB22	15MAR18	01MAR21	01AUG20	01FEB22
Certain Religious Workers	01FEB22	01FEB22	15MAR18	01MAR21	01AUG20	01FEB22



In March 2023, DOS decided that separating these three countries from the rest of the world for purposes of visa availability was a legal error. 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. See Figure 2.

Figure 2) Now, After April 1, 2023.



Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01FEB22	01FEB22	C	C
2nd	01JUL22	08JUN19	01JAN11	01JUL22	01JUL22
3rd	C	01NOV18	15JUN12	C	C
Other Workers	01JAN20	01OCT14	15JUN12	01JAN20	01JAN20
4th	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18
Certain Religious Workers	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18

Why is demand so high from these three countries?

The high demand for EB-4 green cards from El Salvador, Guatemala and Honduras is due to Special Immigrant Juvenile Status (SIJS), a green card for minors abandoned, abused, and/or neglected by one of their parents. Since 2014, requests for SIJS green cards have skyrocketed from these three countries. Because SIJS falls under EB-4, reallocating demand from these 3 countries resulted in substantially increased wait times.

What was DOS' "legal mistake?"

In addition to being divided into preference categories (e.g., EB-4), employment-based green card allocation is divided further by nationality. The law limits only 7% of total available visas be issued to a single nationality. If the demand from one nationality exceeds the allocated 7%, the nationality is listed in a separate column in the visa bulletin.

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.

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.

What does this mean for you?

An individual who already filed an adjustment of status (AOS) application (i.e., green card application filed in the U.S.), but whose priority date is not current, may remain in the U.S. despite no longer being eligible for a green card. USCIS will keep their file until their priority date is current which means their "place in line" for green card (i.e., priority date- for I-360, the date of its filing) comes to the front of the line in the Visa Bulletin. Once this occurs, USCIS will adjudicate the green card. Until then, the religious worker may receive extensions of their employment authorization card and advanced parole.

Individuals on R-1s who have not yet filed an AOS application (even if your I-360 is currently pending with USCIS) will likely have to leave the U.S. for a year once they exhaust their 5-year limit in R-1 status. After that year, they can once again hold R-1 status for 5 years. However, there will be difficulty with getting an R-1 visa granted at the

consulate if R-1 visa applicant has I-360 approval in place because R-1 visa does not allow the religious workers to have intent to permanently stay in the U.S.

It is important to note that I-360s are specific to position and petitioner. This means that if a green card is approved the religious worker must take the position listed in the I-360, regardless of changes in their situation since applying.

Alternate Options:

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

- **H-1B:** If the hiring organization requires a bachelor's degree in a specific field of study, the H-1B is a potential alternate option. The employer would be required to pay at least prevailing wage for the occupation in the location of the job, 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 exists (disregarding exemptions). USCIS received more than 750,000 H-1B registrations for the next fiscal year. Finally, the costs of the H-1B must be paid fully by the employer.
- **L-1:** If an organization has a hierarchical structure where its entities and activities are controlled by an umbrella governing body, the L-1 may be a viable alternative. 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.

Green Card:

- **PERM:** This alternative requires the U.S. labor market test in the geographical area where the job is offered to show there is no willing, able, and qualified U.S. worker available for the proffered position. This can be difficult for religious workers as it is a more expensive and complex process that requires the petitioning organization to cover all costs. The employer is required to pay the prevailing wage for the occupation in the location of the job, which may pose an additional challenge.
- **Multinational Manager/Executive**
- **National Interest Waiver**

The Religious Worker Green Card Process

The religious worker green card process has two phases. First is the I-360 special immigrant petition, which will give you a **priority date**. Each month, the Department of State publishes the Visa Bulletin, which shows the priority dates that are eligible to move to step two. Once your I-360 priority date is current on the Visa Bulletin, you are eligible to apply for a green card. In May 2023, only those with the priority date of October 1, 2018 or earlier can file a green card application.

[Visa Bulletin - May 2023](#)

When the visa bulletin indicates that an applicant's priority date is current, or that they filed their I-360 on or before the listed date, the applicant may move on to the second and final phase of the green card process –AOS if you are in the U.S. in valid status or consular processing of applying for an immigrant visa at the U.S. consulate abroad.

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