



# Religious Worker Green Card Retrogression

**Speaker: Yeon Me Kim, Senior Attorney**

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# Overview of Special Immigrant Religious Workers Green Card Process

- A special immigrant religious worker is a noncitizen who is coming to the United States to work full time (an average of at least 35 hours per week) in a compensated position as a minister or in a religious vocation or occupation and be employed by a non-profit religious organization or religious organization under the group tax exemption or nonprofit affiliated with a religious denomination in the United States.
- To qualify, you must have been a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately before filing the petition. In addition, you must have been working in one of the positions described above after the age of 14, either abroad or in the United States, continuously for at least two years immediately before the filing of a petition with USCIS. The prior religious work does not need to correspond precisely to the type of work you will perform.
- A green card petitioning organization needs to file Form I-360 on behalf of the foreign national first, and once that is adjudicated/approved and the place in line for a green card is in front of the line (i.e., if a priority date is current), a green card can be filed (either adjustment status or consular processing).



# Visa Bulletin

## A. FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	01AUG23	01FEB22	01JAN12	01AUG23	01AUG23
2nd	01APR22	08JUL19	01JAN11	01APR22	01APR22
3rd	01MAY20	01JUN19	01JAN09	01MAY20	01MAY20
Other Workers	01MAY20	01SEP15	01JAN09	01MAY20	01MAY20
4th	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18
Certain Religious Workers	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18
5th Unreserved (including C5, T5, I5, R5)	C	08SEP15	01APR17	C	C
5th Set Aside: Rural (20%)	C	C	C	C	C
5th Set Aside: High Unemployment (10%)	C	C	C	C	C
5th Set Aside: Infrastructure (2%)	C	C	C	C	C

\*Disclaimer: This presentation is for general educational purpose and does not constitute legal advice or imply any attorney-client relationship.

# Why can't you file for a green card right now if you have a I-360 approval?

## The Change

- Employment-Based Fourth Preference immigration visa (EB-4) category significantly increased the wait time from months to years.
- EB-4 category includes religious workers, special immigrant juveniles, certain broadcasters, certain employees of int'l org., and etc.
- Before April 1<sup>st</sup>, 2023: three countries—Honduras, El Salvador, and Guatemala—were grouped together separately under EB-4 for visa availability and faced lengthy wait times compared to other countries that rarely had wait times over a year.
- After April 1<sup>st</sup>, 2023: Above three countries are no longer separated, and the available visas are reallocated across all nationalities.

## The Impact

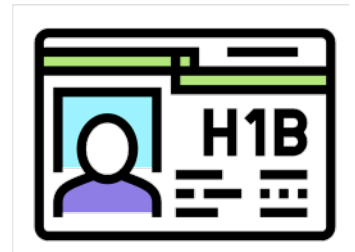
- A person who has already filed an adjustment of status (AOS) application (green card filed in the US), but whose priority date is not current, may remain in the U.S. even though he/she is no longer eligible for a green card until their priority date becomes current.
- A person who has yet to file an AOS application will likely have to depart the U.S. and stay abroad for at least one year once they meet their 5-year limit in R-1 status in order to get another 5 years of R-1. Or they can change to another visa.
- 1-360 are position-specific and petitioner-specific → If a green card is approved, then the religious worker must take the position noted in the I-360 regardless of the changes in their situation.

# Alternative Options

## NIV Options

### **H-1B (Nonimmigrant)**

- The position offered by the U.S. entity must be a specialty occupation that requires at least a bachelor's degree in a specific field.
- Limited by a quota of 85,000 visas yearly (combining bachelor's and master's degree caps).
- Costs of H-1B must be paid entirely by the employer.



### **L-1 (Nonimmigrant)**

- The organization has a qualifying relationship with an entity abroad (a parent, branch or affiliate) where a foreign national has been working for at least one continuous year within the last 3 years. The sponsored worker is coming to the U.S. to fill an executive, managerial, or specialized knowledge position and has performed such a position abroad.

# Alternative Options

## Green Card Options

### PERM

- Requires the U.S. labor market test in geographical areas where a job is offered to show that there is no willing, able, or qualified U.S. worker available.
- Sponsoring employer must cover the costs.



### Multinational Manager/Executive

- When a foreign worker was employed abroad by a company for at least one continuous year within the last three years immediately preceding either the EB-1 petition or their L-1 entry to the U.S.
- When a foreign worker will continue to provide services to the same/parent/branch/subsidiary/affiliate company
- When the position of the foreign worker abroad was executive or managerial
- When the foreign worker is coming to the U.S. to perform an executive/managerial position
- When the prospective U.S. employer has been doing business for at least one year

### National Interest Waiver

- Foreign workers with higher degrees/exceptional ability in the field and whose work is in the U.S. national interest may apply for a waiver of the PERM labor certification requirement and submit an Immigrant Visa Petition.

## Advocacy Efforts

- Support the efforts of removing special immigrant juveniles (SIJS) from EB-4 category by supporting the “**Protect Vulnerable Immigrant Youth Act**”. This will free up employment-based visas so that they can be available to religious workers. SIJS is a humanitarian status that provides protection to immigrant children up to the age of 21 who have been recognized as abused, abandoned, or neglected by their parents in state juvenile court proceedings. Children and youth with SIJS can apply to work legally and become lawful permanent residents. This bill will also help SIJS grant children who wait in legal limbo for years due to the delay in getting a green card.
- Sign: <https://aila.quorum.us/campaign/48630/>