

Can student visa holders apply for a Green Card?

Synopsis

A green card is considered to have been filed usually when an application for an immigrant visa (Form I-140) is filed with the USCIS. The majority of the green cards require preclearance from the US Department of Labor, referred to as labor certification or PERM petition.



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Most nonimmigrant visas (temporary visas) require an intention not to remain in the **United States** permanently. This intention is referred to as a “nonimmigrant intent.” Filing for a **green card** reveals an obvious immigrant intent. Nevertheless, there are situations in which such filing may be acceptable. It is essential to understand the applicable laws.

Entry into the US can be denied

If a **student visa** holder has a green card pending, theoretically, their reentry into the United States could be denied. As a practical matter, that decision rests in the hands of the immigration officer who interviews the student at the airport or port of entry. There is, thus, an undeniable element of risk, which may or may not be acceptable to an individual student.

Safe harbors

Is there any point at which it would be safe for a student to travel despite having a pending green card? Yes, there are two points at which a safe harbor is reached, and traveling is not affected by the pending green card.

The first point is where you have filed and obtained an H-1B, L-1, or O-1 status or visa. Both **H-1B** and L-1 visas specifically, by law, allow the visa/status holder to have a green card pending. They are called dual intent visas, which allow a nonimmigrant to have immigrant intent. The O-1 status or visa is considered to be dual intent by implication and policy. There might be some other less frequently used visas that can also provide the dual intent safe harbor.

The second point at which it is safe to travel is reached when one applies for the last step in the green card process (Adjustment of Status). It is safe to travel on Advance Parole, a document evidencing permission to travel obtained during Adjustment of Status.

What is the “adjustment of status?”

Adjustment of status (AOS or Form I-1485) is the last step in the green card process for those people who are already in the United States in legal statuses, such as a student status. AOS can be filed only if the country a student is born in does not have a long waiting line of people who have applied for their green cards earlier in time. For India-born students, that waiting time could be several years.

It bears emphasizing that the waiting period for AOS is tied to the country of birth, not to the country of citizenship. An exception to being tied down to the country of birth is a rule that permits using an AOS applicant's spouse's country of birth. So, a person born in India could file AOS using their spouse's country of birth if the spouse were, for example, born in Nepal.

When is a green card considered to have been filed?

A green card is considered to have been filed usually when an application for an immigrant visa (Form I-140) is filed with the USCIS. The majority of the green cards require preclearance from the US Department of Labor, referred to as labor certification or PERM petition. While an immigrant intent could be inferred from preparation to file or actual filing of a labor certification, these proceedings are not considered to be direct evidence of a green card. Hence, unless specifically asked by an immigration officer or a pertinent immigration form, a green card is not considered to have been filed until the I-140 stage is reached.

Preparing for and obtaining approval of the labor certification could easily take more than a year. Traveling during this time should be fairly safe.

What is the advantage of applying for a green card early?

The most obvious advantage of applying for a green card while still a student is time-saving. For countries such as India, the green card process requires several years of waiting. Starting the process early obviously should save time. Additionally, if and when an H-1B is obtained, a pending green card petition provides the benefit of extension of the H-1B status well beyond the normal six years.