

# Simplifying the US employment-based visas and their paths to green cards

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Unless one has been living under a rock, it is not possible to ignore the rising tribe of Indian origin CXOs in the US companies. Several of these successful leaders spent their growing up years in India, later migrating to the US, presumably in search of better academic and / or career opportunities.

As per the OECD Better Life Index, the US outperforms the global average in income, jobs, education, environmental quality, social connections, and life satisfaction. The country has been the top draw for international migrants since 1970 (2022 International Migration Highlights, United Nations). India was the top origin country for immigrants to the US in 2022, surpassing China and Mexico, according to the Migration Policy Institute.

According to the latest Open Doors report, 200,000 Indian students chose the US for their higher education in 2021-22, moving to the US on student visas. But what happens after the student visas expire? How does one stay on and build a future there? What are the visa options?

The H1-B temporary employment visa is the most common one among Indians. It accounts for over half the visas issued to Indians seeking to stay in the US for over six months.

The H1-B visa process has become extremely challenging though. For starters, this category has a limited number of visas and the allotment is done by lottery. In an incredibly large pool of highly qualified applicants, only around 30% get their visas approved. The visa also places restrictions on the employees and does not make it easy to change roles and jobs. It also needs to be renewed periodically, and the decision of the extension is in the hands of the employer. The recent layoffs at large US corporates, left several H-1B visa holders high and dry, who then had only 60 days to find a new job to maintain their visa status.

The H1-B visa can be converted to a US green card, the much coveted permanent residency that ends all the uncertainty related to one's living and working status in the US. However, the time this conversion takes is a function of which country you were born in, and which type of employment visa you fall under.

US employment-based visa categories have clear eligibility requirements. Here is a brief summary of the five categories as per the US Citizenship and Immigration Services (USCIS) website:

**EB-1:** For non-citizens of extraordinary ability, outstanding professors or researchers, and certain multinational executives and managers, according to the specific criteria at the attached USCIS link. For the last group, a petitioning employer may or may not be required. This category is tough to qualify for, but has a shorter wait time as compared to the other categories

**EB-2:** For professionals holding an advanced degree or its equivalent, or with exceptional ability, according to USCIS.

**EB-3:** For certain skilled workers and professionals with labour certification and a permanent, full-time job offer in hand.

**EB-4:** For special immigrants such as religious workers, special immigrant juveniles, certain retired officers, certain employees of the US government who are abroad, and their family members.

**EB-5:** For non-citizens who have invested or are actively investing \$1,050,000 (or \$800,000 in targeted employment areas, rural or infra projects) in a new commercial enterprise that will benefit the US economy and create at least 10 full-time jobs.

Indians rank high in the number of applicants under all five EB visa categories. EB-2 and EB-3 categories are very commonly applied for by Indians in the US and have long wait times. The EB-1 has seen a spike in visas issued to Indian nationals in 2020 and 2021, with over 50% growth in each of those years.

India ranks first in receiving EB-1, EB-2 and EB-3 visas, fifth for the EB-4 visa, and third for the EB-5 visa in 2021, although since then India has surged into first place for EB-5 applications in 2022.

The EB-5 visa is the only category that does not rely on previous work experience or professional qualifications and can provide a green card within 24-36 months of application (currently). Also, those already in the US on an H1-B can apply for an EB-5 and simultaneously apply for a work permit based on the EB-5. This work permit is currently coming through within a matter of months. This completely eliminates the uncertainty related to the H1-B status and lets one reap early one of the most important benefits of the green card – the right to work anywhere and in any role in the US, without any strings attached to an employer.

*(While the above may serve as general guidelines, applicants should always consult a qualified US Immigration Attorney who can advise them based on their specific circumstances.)*

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