

Frequently Asked Questions (FAQs) and Answers for HISD Teachers

Permanent Residence

1. I would like to file for lawful permanent residence in the U.S. How do I do that?

You can obtain permanent residence through a family member or your employer. If you are married to a U.S. citizen and this marriage was entered into in good faith, your spouse may be able to sponsor you and the process would likely be faster than through your employer. If you have a U.S. citizen spouse, parent or sibling, please let your attorney know. If you have a lawful permanent resident spouse or spouse seeking permanent residence through his/her employer, please let your attorney know as well.

2. How can I receive permanent residence in the U.S. through my employer?

Employers may petition for permanent residence for eligible employees. The permanent residence process is usually a three step process, with step one being the employer's PERM labor certification application, step two the employer's I-140 Immigrant Petition, and the third and last step being the individual's I-485 application to adjust to permanent resident if in the United States with initial work permit and travel document. If you have children who need permanent residence, they may apply with you as your dependents.

3. Is my employer obligated to sponsor me for permanent residence?

An employer is not required by immigration law to sponsor an employee for permanent residence.

4. What is the PERM labor certification application?

The PERM labor certification application is the first step of the three-step permanent residence process. The employer, after conducting recruitment, may file a PERM application with the U.S. Department of Labor (DOL) for certification (approval) if there are no U.S. workers who are qualified, willing, able and available to fill the position in the area of intended employment. The process requires a good faith test of the labor market in accordance with strict regulatory requirements, and attestations from the employer that the employment of a foreign national will not adversely impact the wages and working conditions of U.S. workers. This is the employer's application and all fees and costs must be paid by the employer for this step. The date the PERM application is filed is called your *priority date*. From initiation of the PERM to certification by DOL, this step could take at least seven months if there is no audit by the DOL.

5. What is the I-140 Immigrant Petition?

The second step in the permanent residence process, the I-140 Immigrant Petition, requires that the employer file an I-140 Immigrant Visa Petition with U.S. Citizenship and Immigration Services (USCIS),

seeking designation of the appropriate immigrant preference category for the case and confirmation of the priority date. (See below on preference category.) At this step, USCIS examines whether the employer has the ability to pay the offered wage and if the employee can prove that he meets the minimum requirements listed in the PERM application as of the filing of the PERM. This petition must be filed within 180 days of the date DOL certified the PERM. Failure to file the Immigrant Petition within this 180-day period will result in expiration of the labor certification, and the inability to file an Immigrant Visa Petition based on the labor certification. A new labor certification process would be required, including a new recruitment period.

6. What is my preference category for permanent residence?

It is likely that if the position requires a Bachelor's degree and no experience (or a Bachelor's degree and less than 5 years progressively responsible experience) that the petition will be classified in the employment-based third-preference (EB-3) category. Your preference category, along with your country of birth and priority date, determines when the I-485 application to adjust to permanent resident can be filed and later approved.

7. What is a priority date?

The priority date is the date of filing of the first step of the permanent residence process. For the three-step process mentioned above, the priority date is the date your PERM labor certification was filed.

8. What is the I-485 application?

The third step in the permanent residence process is the filing of an I-485 Application to Adjust Status to that of a Lawful Permanent Resident (or consular processing if not in the U.S.) upon availability of an immigrant visa number for your employment-based preference category under the annual quota system. At the time you file the I-485 Application to Adjust Status, you may also request an Employment Authorization Document (EAD, Form I-765) and an Advance Parole travel document (Form-131). The fees for both documents are included in the I-485 fee. The processing time for the EAD and Advance Parole documents is usually from 30 to 90 days.

At this stage you may add dependent family members, if any, to the permanent residence process so that they may immigrate with you to the United States. They may file Forms I-485, I-765 and I-131 with yours. Also, if you have teenage children, please contact our office to discuss the possibility that they may turn twenty-one before they complete the processing of their permanent residence applications and so may therefore be ineligible to adjust their status to that of Lawful Permanent Residents as your dependents.

Generally, in order to file an Application to Adjust Status, an Applicant must demonstrate that he/she has maintained lawful nonimmigrant visa status at all times since his/her last admission, has not worked without authorization, has not been unlawfully present in the United States for more than 180 days at any time, and is not otherwise inadmissible in the U.S. due to criminal, immigration fraud, and other violations. Therefore, it is important that you and accompanying family members, if any, maintain their lawful status at all times, and that you notify us if you have any questions regarding the admissibility requirements.

9. When can I file the I-485 application? When will an immigrant visa be available?

Your I-485 Application cannot be filed and approved until your priority date is current and an immigrant visa number is available. Immigrant visa availability is limited under the annual quota system, which is based on an applicant's employment-based preference category, country of birth, and priority date.

In some cases it is possible to proceed with an Application based on the current visa availability for a spouse's country of birth. Therefore, if you have a spouse who was born in a different country, please notify us. To have an estimate of how long it may be before you can file an I-485 application, you can check the Visa Bulletin which changes monthly. (See below on Visa Bulletin.) *Please remember that visa availability under certain employment-based preference categories may retrogress at any time and that this is only an estimate of visa availability.*

10. My Form I-485 application has been pending for several years. Does this mean I am not going to be approved for permanent residence? If I were going to be approved, it would have happened by now, right?

Not necessarily. Your I-485 Application cannot be filed and approved until your priority date is current and an immigrant visa number is available. The priority date is the date the PERM application was filed. Unless your priority date is current, your case will be put on hold until the permanent residence cases of others before you in your preference category are adjudicated, and this may mean waiting a few years depending on how quickly your priority date becomes current. To learn how long you may need to wait, you can check the Visa Bulletin as explained below.

11. How can I check the Visa Bulletin?

To check the Visa Bulletin, go to http://www.fosterquan.com/Processing_Times/. You will need to know your priority date and preference category. Scroll down to "Employment Based," find the appropriate country description based upon your country of birth, e.g. China, India, Mexico, Philippines, or All Chargeability Except Those Listed (those not born in China, India, Mexico or the Philippines), and find your preference category. If the date listed is *before* your priority date, an immigrant visa number is not yet available. If the Visa Bulletin indicates "C" for current, then your priority date is current and the I-485 application can be filed or, if pending, can be approved.

Work Authorization

12. I have been in H-1B status for nearly six years. I have heard that a person can only have H-1B status for six years. What should I do?

In general, the maximum time a foreign national may spend in H-1B status is six years. However, there are a few ways to extend H-1B status beyond the allowed six years, including based on recapture of H-1B time and depending upon where you are in the permanent residence process:

- a. *Recapture time outside U.S.:* If an H-1B beneficiary spent time outside the U.S. while he or she was in H-1B status, that time is not counted toward the six-years. Therefore, the H-1B beneficiary can add that time to their validity period. To add (or "recapture") H-1B time, the employer may file a request for Extension of Status, asking that the employee's H-1B status be extended. H-1B workers should keep proof of their travels abroad, such as exit and entry stamps in their passports, in case an extension based on recapture of time is needed.

- b. *Extensions based on filed PERM or I-140:* If the PERM application or I-140 has been filed or pending for more than a year, the employer can request a one-year H-1B extension from USCIS.
- c. *Approved I-140 but priority date not yet current:* If the I-140 is approved but the beneficiary cannot file the I-485 because the priority date is not yet current, the employer can request a three-year H-1B extension. If the I-485 was filed and visa retrogression has occurred, an H-1B extension based on the approved I-140 can also be filed.

13. I am not eligible to extend my H-1B status past the six year maximum. What are my other options to stay in the U.S.?

If you are not eligible to extend your status past the allowed six years, then you must depart the U.S. prior to the expiration of your H-1B status, unless you have a pending I-485 application or receive permanent residence or have changed to another authorized status, such as H-4. You may have several options based on your personal and immigration circumstances, and you should speak to an attorney to know what your options are. Two options we would like to highlight are:

- a. *Re-applying for an H-1B after being out of the country:* If you have the flexibility to return home for at least a year, your employer may file a new H-1B petition on your behalf when the year is up. Upon approval of the petition, you may apply for an H-1B visa, re-enter the U.S., and start on a new six-year H-1B period.
- b. *Family-based immigration:* If you have a U.S. citizen family member, such as a spouse, he or she may be able to petition for permanent residence on your behalf, which may allow you to stay in the U.S. and continue working.
- c. *If you have a spouse who has his/her own visa,* you may be able to change status and become their dependent. For example, if your spouse is in H-1B, L-1, or TN status, then you could change status to H-4, L-2, or TD, respectively.

Travel Abroad

14. Can I travel abroad while in H-1B status?

In general, a person in valid H-1B status may travel abroad and re-enter the U.S. if he or she has a valid unexpired H-1B visa stamp in his or her passport, is not subject to any grounds of inadmissibility (e.g. grounds for refusing an individual entry to the U.S., such as a criminal issue), and has the appropriate documentation to show that he or she is maintaining H-1B status. If you are in valid H-1B status and need to obtain an H-1B visa, you must apply for a visa from a U.S. Consular post abroad. Please contact your attorney for more details on applying for a visa.

15. What is the automatic revalidation (or contiguous territory) rule?

Even if your H-1B (or dependents' H-4) nonimmigrant visa has expired, you may travel under the automatic revalidation or contiguous territory rule to contiguous territories Canada or Mexico as long as the following applies: (1) you seek readmission to the U.S. after an absence not exceeding 30 days from

Canada or Mexico, (2) have a valid passport, (3) have maintained and intend to continue to maintain your nonimmigrant status, (4) have not applied for a new visa abroad, (5) have retained the original unexpired Arrival/Departure Record on Form I-94 endorsed by the U.S. Department of Homeland Security, and (6) are otherwise eligible to be readmitted without a waiver. Please contact us for further information.

16. Can I travel after I file for permanent residence?

If you have already filed an I-485 Application for Adjustment of Status and it is pending, you may travel in two situations. First, you can travel abroad if you have a valid Advance Parole travel document. Second, if you are in H-1B status, you may travel while the I-485 is pending without Advance Parole if you: (1) are coming back to the U.S. to resume employment with the same authorized H-1B employer and (2) are in possession of a valid H-1B visa (or if you do not have a valid H-1B visa in your passport then are traveling and reentering the U.S. based on the automatic revalidation rule explained above).

If your employer has filed an I-140 Petition and you have not filed an I-485 application, you may travel if you are in valid nonimmigrant status (such as H-1B status) and have a valid visa.

Other Issues

17. If my H-1B visa expires, can I remain in the U.S.? If my I-485 is denied and I do not have a valid H-1B that allows me to remain in the U.S., can I remain in the U.S. anyway?

A foreign national who remains in the United States beyond the expiration of his or her status may be subject to penalties for unauthorized presence. Persons who are unlawfully present in the United States for more than 180 days but less than one year and who then voluntarily depart the United States are inadmissible for a period of three years after their departure (3-year bar). Persons who are unlawfully present for one year or more and who depart the U.S. are inadmissible for ten years after their departure (10-year bar). While there may be a waiver of the bars, this is costly and risky. We recommend that you do not overstay your visa.