



# U.S. Immigration Strategy to Secure Labor

H-2A, H-2B, and  
U.S. Permanent Residence

North Dakota Cooperative Managers Association  
April 2024



# Larson • King's national and international reach

- Headquartered in St. Paul, Larson • King regularly handles matters across the country and globe.
- The majority of Larson • King attorneys are admitted to practice in multiple states.
- Larson • King attorneys frequently speak about important legal topics, author influential articles in national journals, and serve in leadership positions for national organizations.



## Immigration team



- With extensive experience, Larson • King's Immigration Team secures **employer-sponsored immigration benefits.**



# Immigration Overview

- ⊗ H-2A / H-2B, and
- ⊗ U.S. Permanent Residence through PERM



## H-2A:

Seasonal  
ag labor

- Uncapped visa category
- Single filing can cover multiple named / unnamed workers



## **H-2B:**

Seasonal  
non-ag  
labor

- Capped visa category, with 2 visa groups available based on the first half and second half of the government's fiscal year
- Single filing can cover multiple named / unnamed workers



## Maximum period of stay

- 36 months maximum period of stay
- May depart U.S. for 3 months to receive an additional 36 months ("re-set")
  - If stay in U.S. for 18 months or less, 45 days abroad will be interruptive ("re-set")
  - If accumulated length of stay is more than 18 months, 2 months abroad will be interruptive ("re-set")



# Strategic use of H-2A / H-2B

- Employer defined by FEIN
  - But, DOL can review employer circumstances to confirm whether entities with separate FEINs function as a single employer
- H-2A and H-2B opportunities may support separate seasonal needs
  - Could employer partnerships cover 72 months of nonimmigrant work authorization?





# U.S. Permanent Residence:

## PERM

- 3-step process: **PERM**, I-140, I-485
- PERM DOL Platform Change (6/2023)
  - Prevailing wage determination
  - Recruitment
  - Online filing through DOL FLAG
  - Certification taking 12+ months
  - Filing established “priority date”



# U.S. Permanent Residence:

## IV Petition

- 3-step process: PERM, **I-140**, I-485
- I-140 Immigrant Visa Petition
  - USCIS filing to confirm PERM, beneficiary qualifications, and employer ability to pay
  - USCIS government filing fee adjustment to \$715 (from \$700) – effective April 1, 2024



# U.S. Permanent Residence:

## Adjustment of status

- 3-step process: PERM, I-140, **I-485**
- I-485 Adjustment of Status Application
  - Personal application to change status (not employer sponsored)
  - Family members can simultaneously file, thereby qualifying for a work permit and travel document; USCIS now issues benefit for 60 months (fall 2023)
  - Requires an available visa number based on "priority date"



# U.S. Permanent Residence:

Visa  
Retrogression  
Explained

- Immigrant visa number availability based on “priority date”
  - [Monthly visa bulletin](#)
  - Final action chart v. Date for filing chart
  - USCIS monthly confirmation of which chart applies



# U.S. Permanent Residence

## Visa Retrogression Explained (part 1)

- DOS Final Action Date Chart

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2024/visa-bulletin-for-april-2024.html>



### 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	C	01SEP22	01MAR21	C	C
2nd	15JAN23	01FEB20	15APR12	15JAN23	15JAN23
3rd	22NOV22	01SEP20	15AUG12	22NOV22	22NOV22
Other Workers	08OCT20	01JAN17	15AUG12	08OCT20	01MAY20



# U.S. Permanent Residence

## Visa Retrogression Explained (part 2)

- DOS Date for Filing Chart

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2024/visa-bulletin-for-april-2024.html>



## B. DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit [www.uscis.gov/visabulletininfo](http://www.uscis.gov/visabulletininfo) for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 5.A.) this month for filing applications for adjustment of status with USCIS.

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01JAN23	01APR21	C	C
2nd	15FEB23	01JUN20	15MAY12	15FEB23	15FEB23
3rd	01FEB23	01JUL21	15SEP12	01FEB23	01JAN23
Other Workers	15DEC20	01JUN17	15SEP12	15DEC20	15MAY20





# U.S. Permanent Residence

## Visa Retrogression Explained (part 3)

- USCIS monthly selection

<https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>



# Adjustment of Status Filing Charts from the Visa Bulletin

If USCIS determines there are more immigrant visas available for a fiscal year than there are known applicants for such visas, we will state on this page that you may use the **Dates for Filing** chart. Otherwise, we will indicate on this page that you must use the **Final Action Dates** chart to determine when you may file your adjustment of status application. However, if a particular immigrant visa category is “current” on the Final Action Dates chart or the cutoff date on the Final Action Dates chart is later than the date on the Dates for Filing chart, applicants in that immigrant visa category may file using the Final Action Dates chart during that month.

We anticipate designating one of the two charts each month and linking to the relevant chart below within one week of DOS’s publication of the [Visa Bulletin](#).

## Current Month’s Adjustment of Status Filing Charts

*For Family-Sponsored Filings:*

For all family-sponsored preference categories, you must use the [Dates for Filing chart in the Department of State Visa Bulletin for April 2024](#).

*For Employment-Based Preference Filings:*

For all employment-based preference categories, you must use the [Final Action Dates chart in the Department of State Visa Bulletin for April 2024](#).

- [USCIS April 2024 Adjustment of Status Filing Charts](#)



# U.S. Permanent Residence:

## Strategic Considerations

**Will the filing of a permanent labor certification impact a claim of temporary / seasonal employment?**

- Possibly

**Does the permanent, year-round position require 2+ years experience?**

- EB-3 v. Other workers

**Is there a strategy to maintain nonimmigrant status?**

- 36mo H-2A (seasonal)
  - Livestock?
- 36mo H-2B (seasonal)



THANK YOU NORTH DAKOTA  
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