

EXPRESS

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Green card line's long, but you can get ahead

Key factors are you should have filed long before and submitted the right documents

MANY PROFESSIONALS who filed for 3rd Preference some years back before Oct. 1, 1991, have expressed their confusion as to why others who have filed as recent as the week before the cut-off date, have obtained their green card ahead of time, and without the usual delay of difficulty.

Take this example of two teachers: One filed her 3rd Preference petition way back in 1980. The second teacher filed her 3rd Preference petition on Sept. 30, 1991. The second teacher has obtained her green card, while the first has not.

Wasting no time

The key to this question lies on two factors: 1) that these professionals filed their 3rd Preference before Oct. 1, 1991 and; 2) they wasted no time in filing for an Adjustment of Status (for those in the US), or in submitting their completed Packet III forms to the US Embassy in the Philippines.

On Oct. 1, 1991, all 3rd Preference petitions filed before that date were categorized under a new employment-based 2nd Preference category. Inasmuch as the category was new, visa numbers were "current" or readily available.

As such, whether one filed for that category in 1980 or as late as Sept. 30, 1991, did not matter anymore. The only determining factor as to who could obtain his green card earlier or ahead of the rest, depended on how soon an applicant proceeded to the next step. Either he files for an Adjustment of Status if in the US, or he returns to the US Embassy of his home country, to execute Packet III forms. To delay this action is to delay the opportunity to obtain one's green card. In other words, it's a first come, first serve basis.

As mentioned, the old 3rd Preference is now the new "employment-based" 2nd Preference, except that the new 2nd Preference is reserved only for those professionals with an advanced degree or bachelor's degree plus five years experience in their specialty. Professionals therefore like nurses, teachers, accountants, engineers who do not have a master's degree or bachelor's degree plus five years working experience do not qualify under this new 2nd Preference, unless such professionals filed their applications before Oct. 1, 1991.

Under the new law, there are five "employment-based" preferences. I have already elaborated on the new 2nd Preference.

The employment-based First Preference is for aliens whose professional skills or ability are considered "extraordinary" — those who have risen to the top of their field, whether they be in sciences, arts, education, business or athletics. A particularly high standard is set under this category. Aliens must satisfy at least three out of ten conditions, among them, membership in associations requiring outstanding achievement, published materials, exhibitions of work, high salary,

or must have been a recipient of a major award. No offer of employment is required under this group but they must prove that they are going to pursue their area of expertise in America.

Included also in this category are outstanding professors and researchers who are recognized internationally as being outstanding in their specific academic areas. Executives and managers can also fall under this group if they can show that they have been employed at least one year of the three preceding years by the overseas

affiliate or subsidiary of the petitioning US employer under a managerial or executive capacity.

The new employment-based Third Preference includes two groups: professionals or skilled workers, and the unskilled workers. It was to this category that approved 6th Preference petitions of the old law have been absorbed.

Under this category are aliens with a bachelor's degree, and skilled workers capable of performing work requiring at least two years training or experience.

Unskilled workers are also included under this group, but with a subpreference visa numbers of 10,000. They are those who work in jobs that do not require two years of experience. Both skilled and unskilled workers require labor certification.

The fourth employment-based preference is for certain special immigrants, including religious workers, and the fifth preference is for foreign investors with one million dollars to invest in the US.

Only 10,000 visas are allotted to the 4th Preference, far less than the 40,000 each allotted to the first three employment-based categories. In the case of petitioning religious workers, they must have been a member of a religious denomination for at least two years immediately preceding their application. In seeking entry to the US, they must also prove that they intend to be a minister of religion, or work in a religious

capacity; or work for a religious organization or a related tax-exempt entity in a non-professional capacity.

Another 10,000 visas are also set aside for investors in the employment-based fifth category. Other than the investors' high investment in an enterprise, they must show that they intend to provide 10 full time jobs for US citizens or permanent residents in the US. The 1990 law set the maximum investment at \$1 million but the INS may allow \$500,000 as initial investment so long as the investors may show intended investment in targeted areas such as in rural areas or areas with high unemployment.

The requirement to establish a new enterprise is satisfied either by creating a new business or by buying and reorganizing an existing company.

It must be noted that alien entrepreneurs do not have to create 10 new jobs if they are taking over a troubled business that is losing 20 percent of its net worth. A business plan must however be presented to show the business' potential for growth and that its existing employees shall be maintained.