



INTRODUCTION TO EMPLOYMENT- BASED SPONSORSHIP:

**A TOOLKIT FOR MEMBERS WITH
VULNERABLE IMMIGRATION STATUS**

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NATIONAL EDUCATION ASSOCIATION

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INTRODUCTION TO EMPLOYMENT-BASED SPONSORSHIP:

A Toolkit for Members with Vulnerable Immigration Status

NEA is proud to have members from diverse backgrounds, including members who are immigrants to the United States. Many educators from immigrant backgrounds have U.S. citizenship or permanent residency (also known as a Green Card), which allow them to live and work in this country indefinitely. But some have a status that is lawful but not permanent, and that can be vulnerable to sudden change—especially in the current political climate. Beneficiaries of certain programs that confer temporary legal status, such as Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS), may wish to learn about how they can obtain a status that is more stable or even permanent.

This toolkit is a starting point for supporting members with vulnerable immigration status, like DACA or TPS, to explore whether employment-based sponsorship may be an option for them. Read on to learn more about the problem facing these educators, possible solutions through employment-based sponsorship, and resources that members can access if they want to learn more.

Background

Although there are several categories of immigrants whose status is vulnerable, two programs that are at particular risk during the Trump-Vance Administration are DACA and TPS.

DACA is a program that President Obama announced in 2012. It allows undocumented immigrants who grew up in the United States, sometimes called Dreamers, to seek temporary protection from deportation and authorization to work. Currently, **505,940 people are estimated to have DACA**,¹ more than **10,000 of whom are educators**.² DACA holders were born in countries around the world, the vast majority from Mexico, followed by El Salvador, Guatemala, and Honduras. DACA has **benefited recipients, their families, and the U.S. economy**,³ and it has had **the support of most Americans**.⁴ Nevertheless, it is being **challenged in court**,⁵ and the Trump-Vance administration has **encouraged DACA recipients to leave the country**.⁶ Absent a legislative solution, Dreamers are at risk of losing their status.

TPS is a humanitarian program that Congress created more than 30 years ago to assist individuals from designated countries experiencing unsafe conditions. Individuals with TPS may stay and work in the United States while those conditions continue. **As of March 2025**,⁷ there were around 1.3 million TPS holders from 17 countries, nearly half from Venezuela, followed by Haiti, El Salvador, Ukraine, and Honduras. Over the past year, however, the Trump-Vance administration has **announced the end of TPS designations for many countries**,⁸ **resulting in uncertainty and legal challenges**.⁹ Because TPS designations are temporary by design and vulnerable to political forces, recipients' status is not secure.

1 <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>

2 <https://www.americanimmigrationcouncil.org/fact-sheet/deferred-action-childhood-arrivals-daca-overview/>

3 <https://www.americanprogress.org/article/10th-annual-daca-survey-2024-findings-reveal-whats-at-stake-for-recipients-and-the-united-states/>

4 <https://forumtogether.org/article/new-survey-americans-want-a-legislative-solution-for-dreamers/>

5 <https://www.fwd.us/news/daca-court-case/>

6 <https://www.npr.org/2025/07/29/nx-s1-5482923/dhs-daca-recipients-self-deport>

7 <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>

8 <https://www.uscis.gov/humanitarian/temporary-protected-status>

9 <https://asaptogether.org/en/temporary-protected-status/>

Opportunities

NEA members who have vulnerable immigration status, like DACA or TPS, may wish to consider employment-based sponsorship for greater stability. For NEA members, this generally means a school district or higher education institution sponsoring an employee for a temporary work visa, like the H-1B, or for a Green Card through the labor certification process. These options have different requirements, timelines, and costs, and they offer different benefits and drawbacks.

NEA has collected a set of guidance documents to help members understand their options for employment-based sponsorship and how to obtain it. Many of these resources have been developed by [Path2Papers](#), a project at Cornell Law School that assists Dreamers in pursuing pathways to permanent residency.¹⁰ Although some of these resources are tailored to DACA recipients, the options they describe are generally available to individuals with other vulnerable immigration status, like TPS. Some of the resources are reproduced at the end of this document, but all are available online through the links provided.

➤ **Learn about employment-based sponsorship and how it can make sense for educators and the K-12 schools that employ them:** [Employer-Sponsored Work Visas in K-12 – Path2Papers](#).¹¹ *This resource is appended to the toolkit.*

➤ **Understand the basics of obtaining a Green Card through the PERM process:** [An Introduction to Employment-Based Green Cards for K-12 Employees – Path2Papers](#).¹² *This resource is appended to the toolkit.*

- ❑ More details about the steps to obtain a Green Card can be found here:
[A Step-By-Step Timeline of the Employment-Based Green Card Application via PERM – Path2Papers](#).¹³

➤ **Understand the basics of obtaining a work visa through the H-1B program:** [Understanding H-1B for DACA Recipients: Benefits, Risks, and Strategies – Path2Papers](#).¹⁴ *This resource is appended to the toolkit.*

- ❑ More details about the steps to obtain an H-1B visa can be found here:
[H-1B Visas for Speciality Occupations – Path2Papers](#)¹⁵

For more information:

- Compare the differences between obtaining an H-1B visa and obtaining a Green Card through the PERM Process: [H-1B vs. Green Card Through PERM: A Quick Comparison – Path2Papers](#)¹⁶
- Learn about other employment-based options, such as achievement-based pathways, that could be available to some members:
[Beyond Ordinary: Understanding the O-1 Visa](#) and [Understanding the National Interest Waiver: A Path to a Green Card](#).¹⁷
- Get tips about how employees can work with their employers to obtain sponsorship:
[How To Approach Your Employer For Visa Sponsorship - Informed Immigrant](#)¹⁸

10 <https://sites.lawschool.cornell.edu/path2papers/>

11 <https://sites.lawschool.cornell.edu/path2papers/resources/employer-sponsored-work-visas-in-k-12/>

12 <https://sites.lawschool.cornell.edu/path2papers/resources/an-introduction-to-employment-based-green-cards-for-k-12-employees/>

13 <https://sites.lawschool.cornell.edu/path2papers/resources/a-step-by-step-timeline-of-the-employment-based-green-card-application-via-perm/>

14 <https://sites.lawschool.cornell.edu/path2papers/resources/understanding-h-1b-for-daca-recipients-benefits-risks-and-strategies/>

15 <https://sites.lawschool.cornell.edu/path2papers/resources/h-1b-vs-green-card-through-perm-a-quick-comparison/>

16 <https://sites.lawschool.cornell.edu/path2papers/resources/h-1b-vs-green-card-through-perm-a-quick-comparison/>

17 <https://sites.lawschool.cornell.edu/path2papers/resources/understanding-the-national-interest-waiver-a-path-to-the-green-card/>

18 <https://www.informedimmigrant.com/resources/daca/how-to-approach-your-employer-for-visa-sponsorship/>

- Explore a general resource for individuals with vulnerable immigration status who are studying for or have received a college or graduate degree:
[From Campus to Career: A Practical Guide to Employment-Based Visas for Noncitizen Students in Higher Education - Presidents' Alliance](#)¹⁹

Next Steps

Those who want to learn more should consider these additional resources and opportunities. They include further learning for educators and their employers and consultations about individual circumstances.

- View a prerecorded webinar by Path2Papers:
[The Importance of Work Visas for Persons with Vulnerable Immigration Status in the K-12 Setting – Path2Papers](#)²⁰
- Review and share additional materials, including important details about the H-1B and PERM processes that employees and employers should know about.
 - ❑ Resources for employees: [Resources for Dreamers – Path2Papers](#)²¹
 - ❑ Resources for employers: [Resources for Employers – Path2Papers](#)²²
 - ❑ Resources tailored to advanced-degree students and recipients:
[Resources for Students and Graduates - Presidents' Alliance](#)²³
- Get a personalized assessment:
 - ❑ Path2Papers offers free consultations about employment-based sponsorship. Although people from certain regions are prioritized due to grant funding, Path2Papers works with others on a case-by-case basis.
- Sign-up for employees: [Path2Papers ~ Interest Form for Individuals - Airtable](#)²⁴
- Sign-up for employers: [Path2Papers ~ Interest Form for Employers - Airtable](#)²⁵
 - ❑ The President's Alliance on Higher Education and Innovation Law Lab offer an online questionnaire to assess immigration options, as well as free consultations for certain individuals who are college students or graduates: [Legal Pathways Learning Tool & Legal Consultations - Presidents' Alliance](#)²⁶
- Talk to your state affiliate about any immigration resources they may offer, including connections to lawyers who can help.

Appended in full at the end of this document:

- [Employer-Sponsored Work Visas in K-12 – Path2Papers.](#)
- [An Introduction to Employment-Based Green Cards for K-12 Employees – Path2Papers](#)
- [Understanding H-1B for DACA Recipients: Benefits, Risks, and Strategies – Path2Papers](#)

19 https://www.higheredimmigrationportal.org/effective_practice/from-campus-to-career-a-practical-guide-to-employment-based-visas-for-noncitizen-students-in-higher-education/

20 <https://sites.lawschool.cornell.edu/path2papers/resources/resources-for-employers/the-importance-of-work-visas-for-persons-with-vulnerable-immigration-status-in-the-k-12-setting/>

21 <https://sites.lawschool.cornell.edu/path2papers/resources/resources-for-dreamers/>

22 <https://sites.lawschool.cornell.edu/path2papers/resources/resources-for-employers/>

23 <https://www.higheredimmigrationportal.org/lptw/lptw-resources-for-students-and-graduates/>

24 <https://airtable.com/appPHolJSTivT3tVh/pagFsGzqfLqGKGLbE/form>

25 <https://airtable.com/appPHolJSTivT3tVh/pagGbtgSjr8P3XjeS/form>

26 <https://www.higheredimmigrationportal.org/lptw/legal-pathways-learning-tool/>



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Retaining Employees with Vulnerable Immigration Status: Employer-Sponsored Work Visas in the K-12 Setting

Authors: Miguel Bocanegra, Megan Kludt, and the Path2Papers legal team

If you are a K-12 school employee, your employer may be able to sponsor you for a work visa. This guide provides a broad overview of employment-based options. Since 2024, Path2Papers has found that 91% of K-12 staff screened are eligible or could become eligible for a work-related visa.

As immigration protections like Deferred Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS), and even Asylum face potential termination or significant limitations, it is important to consider alternative immigration options that may be more stable and potentially permanent. Employer sponsorship may be available for temporary visas and even permanent residency (commonly known as a “green card”) for many types of positions in the K-12 setting, including teachers, administrators, bus drivers, nurses and many more. It is very important to be screened by an immigration attorney for the options that best fit your specific situation.

This guide includes the following:

- A. [Overview of “Vulnerable Immigration Status” and Work Visas](#)
- B. [Temporary Work Visa: H-1B for Specialty Occupations](#)
- C. [Green Card Options: Labor Certification \(PERM\)](#)
- D. [Waivers for Immigration Violations](#)
- E. [How K-12 employees can get legal help from Path2Papers](#)

This overview is focused on work visas in the K-12 setting. If you are in higher education, there may be additional options that you can review in this [summary](#),¹ along with more detailed guides at path2papers.org. Please note, the following is not legal advice. Please consult an experienced immigration attorney with any legal questions.

¹<https://sites.lawschool.cornell.edu/path2papers/resources/employment-based-immigration-101-for-dreamers-and-employers/>

Overview of “Vulnerable Immigration Status” and Work Visas

What is “vulnerable immigration status”?

There are some forms of immigration benefits that can be more easily taken away than others because they are created or heavily controlled by the executive branch (i.e. the President), rather than Congress. Examples include temporary programs like DACA, TPS, and parole. Another form of vulnerable immigration status is pending applications that haven’t received a final decision, such as asylum or a U-visa with deferred action.

What is DACA?: DACA, or “Deferred Action for Childhood Arrivals” is a temporary humanitarian immigration benefit created in 2012 but is not permanent. It offers temporary protection from deportation and work authorization for roughly 506,000 individuals who were brought to the U.S. as children without legal status.² The program has been challenged multiple times via litigation, and the courts or the president could end the program.³ So, DACA recipients and employers who support them should consider paths to longer-term or permanent status.

What is TPS?: “TPS” stands for Temporary Protected Status. TPS is designated by the Secretary of Homeland Security based upon specific country conditions which would temporarily prevent the people from that country from returning safely because of wars, environmental disasters or other conditions deemed appropriate. TPS can be terminated and can leave recipients without employment authorization or protection against deportation. As of March 2025, an estimated 1.3 million people had TPS, but since then the Trump Administration has terminated or intends to terminate TPS for over 1 million people; some TPS terminations are still being challenged through lawsuits.⁴

Why would people with “vulnerable immigration status” benefit from work visas?

If an employee has a vulnerable immigration status, moving to a work visa could help the employee maintain work authorization and protection against deportation. It could also lead to a more permanent solution through a green card.

Depending on the employee’s occupation, skills, and education, they could qualify for one of many employment-based immigration categories. Two of the most common are:

- (1) **H-1B temporary work visa**, which is generally for a job that requires a specific degree in a specific field (such as a social worker with a social work degree, a teacher with an education degree, or someone working in a STEM field); and

² As of September 30, 2025. “Active DACA Recipients - (Fiscal Year 2025, Quarter 4),” USCIS, available at https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy2025_q4_v1.xlsx.

³ For current developments regarding DACA litigation see <https://www.fwd.us/news/daca-court-case/>.

⁴ “Temporary Protected Status (TPS): An Overview,” American Immigration Council, March 13, 2026, available at <https://www.americanimmigrationcouncil.org/fact-sheet/temporary-protected-status-tps-overview/>. For a current summary of TPS designations, read CLINIC’s resource at <https://www.cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/tps-quick>.

- (2) **Green card through “labor certification,”** which can be done for any full-time job without a fixed end date, regardless of the field.

These two options are not mutually exclusive. An employer can sponsor an employee for one or both, and the best strategy is specific to the employer and employees’ circumstances. While less common for K-12, other temporary and green card options may also be available depending on the employee’s situation. For a general overview of other options, read our [EB 101 resource](#).⁵

Temporary Work Visa: H-1B for Specialty Occupations

The H-1B temporary work visa⁶ is designed for employers seeking to hire non-citizens as workers in *specialty occupations*. A specialty occupation is a job that requires at least a bachelor’s degree (or its equivalent) in a specific field and requires specialized knowledge, such as a social worker with a social work degree or a teacher with an education degree. It is important that the degree and experience required for the role relate to the actual duties for the role.

Temporary Visas: H-1B

- At least a Bachelor’s Degree or its equivalent**
- Specialty Occupation: Degree & job must match**
- 65-85,000 visas/year so generally must enter a lottery in March, but colleges, universities, and some government and non-profit entities are exempt from the lottery. K-12 is often exempt.**

Figure 1: H-1B Eligibility Requirements.

⁵<https://sites.lawschool.cornell.edu/path2papers/resources/employment-based-immigration-101-for-dreamers-and-employers/>

⁶ While less common for K-12 positions, details on the temporary O-1 visa for extraordinary ability can be found at <https://sites.lawschool.cornell.edu/path2papers/resources/beyond-ordinary-understanding-the-o-1-visa/>.

Although many people think the H-1B is only for the tech industry or STEM fields, education was the third largest occupational group for H-1B holders in recent years.⁷ It is used by school districts for common positions such as teachers, nurses, guidance counselors, and IT professionals. It generally takes 6-8 months for the H-1B application to receive a decision, but it could be as little as 15 days for an additional fee. If approved, the H-1B is valid for three years and may be renewed for another three years. DACA recipients have trade-offs to consider between continuing with DACA or moving to an H-1B, which are described [here](#).⁸ To read more about the H-1B, see [Frequently Asked Questions: H-1B Visas for K-12 Institutions](#)⁹ and [The H-1B Lottery](#).¹⁰

D-3 Waiver

Employees in a vulnerable status who receive an approved H-1B must usually depart the U.S. to obtain the visa from a consulate abroad.¹¹ Traveling abroad may trigger a bar on re-entry for some individuals, specifically those who accrued a certain amount of “unlawful presence” in the U.S. over the age of 18. For example, this bar applies to individuals who were adults when the DACA program was created, or who were adults when they received TPS or another status. These applicants may apply for a “D-3 waiver,” which excuses past unlawful presence, as well as most other immigration violations. The normal adjudication process for D-3 waivers can take a year; however, many DACA and individuals with vulnerable status can receive the waiver through a shorter, expedited process. Some employees do not need a waiver - for example, “unlawful presence” acquired under the age of 18, with no other violations, does not require a waiver. It is important for employees to be screened by an immigration attorney to determine if they need a waiver.

Trump Administration’s \$100,000 Fee

In September 2025, the Trump administration issued a Proclamation forcing employers to pay \$100,000 per employee if that employee must depart the U.S. to activate the H-1B. Unfortunately, as noted above, this fee applies to most employees in vulnerable status because they usually need to leave the country to activate a new H-1B. There are limited exceptions to the fee that are hard to get. Lawsuits are pending arguing that the Proclamation is illegal. Path2Papers is monitoring these developments closely, and future updates can be found [here](#).¹² Despite this high fee, it is still important to be screened for H-1B eligibility because the fee could be eliminated in the future, either by the courts or a future president.

⁷ Characteristics of H-1B Specialty Occupation Workers, USCIS, (April 29, 2025), page 10, accessible at https://www.uscis.gov/sites/default/files/document/reports/ola_signed_h1b_characteristics_congressional_report_FY24.pdf.

⁸<https://sites.lawschool.cornell.edu/path2papers/resources/understanding-h-1b-for-daca-recipients-benefits-risks-and-strategies/>

⁹<https://sites.lawschool.cornell.edu/path2papers/resources/resources-for-employers/frequently-asked-questions-h-1b-visas-for-k-12-institutions/>

¹⁰<https://sites.lawschool.cornell.edu/path2papers/resources/resources-for-employers/the-h-1b-lottery-a-brief-overview-of-cap-subject-and-cap-exempt-employers/>

¹¹ Note that some employees with TPS might be able to obtain their visa from within the United States.

¹²<https://sites.lawschool.cornell.edu/path2papers/resources/breaking-down-the-h-1b-proclamation-what-we-know-so-far/>

Green Card Options: Labor Certification (PERM)

An employer can sponsor a K-12 employee for a Labor Certification-based green card if the employer can show that there is no “able, willing, qualified and available” U.S. Citizen worker for the position. Unlike the H-1B, the Labor Certification can be filed for all types of roles, including roles that do not rely on degrees, like cooks/food preparers, bus drivers, administrative roles, and more. The green card process generally takes 3-5 years to complete, however it could take longer depending on each employee’s specific circumstances.

Step 1: The Labor Certification¹³ filing starts with the employer identifying the minimum requirements for the role and completing a round of recruitment to “test” the labor market. If that recruitment does not identify an “able, willing, qualified and available” U.S. Citizen worker, the employer files the labor certification with the Department of Labor. This stage of the green card process is often referred to as “PERM.”

Step 2: Once the Labor Certification is approved, the employer files an immigrant visa petition showing that they still want to sponsor the employee, can pay the employee's salary and the employee meets the minimum requirements of the role as advertised. Once the immigrant visa petition is approved, the employee can pursue a green card. However, there is a quota for how many green cards can be issued per year, so there is often a wait before the employee can move to the final step.

Step 3: Once the employee is eligible to move to the final step, the green card can be accessed through “Consular Processing” or “Adjustment of Status.” Most employees will need to go through consular processing, which means traveling to the U.S. Embassy/Consulate in their country of birth for the green card interview. Some employees who are [245\(i\) eligible](#)¹⁴ or in the U.S. in a temporary status, like H-1B, can do Adjustment of Status, and complete the green card interview inside the U.S. There are variations to this process, so further screening of the individual's background facts are important.

Waivers for Immigration Violations

If an employee has certain immigration violations, they may need a “waiver” to waive/excuse these violations before they can complete the work visa process. For H-1B visas, the applicable waiver is the “D-3 waiver,” described above in section B. Separately, for green cards, the applicable waiver is the I-601 waiver. Each waiver has different requirements and can excuse different immigration violations.

¹³ There are less common green card options such as the National Interest Waiver. More information about this process can be reviewed at <https://sites.lawschool.cornell.edu/path2papers/resources/understanding-the-national-interest-waiver-a-path-to-the-green-card/>.

¹⁴ <https://www.fwd.us/news/what-is-section-245i/>

As mentioned previously, the most common immigration violation is having 180 days or more of “unlawful presence,” which triggers a 3- or 10-year bar when someone leaves the country for the H-1B visa or green card interview.¹⁵ Specific to the I-601 waiver for green cards, the “unlawful presence” violation requires a demonstration of “extreme hardship” to a spouse or parent who is a U.S. citizen or lawful permanent resident (green card holder).

Employees may also have other immigration violations, such as previous criminal conduct, that could bar them from obtaining a temporary visa or green card. It is important for employees to consult with an experienced immigration attorney to understand if they need a waiver and how to qualify. Some employees do not need a waiver to be approved for the H-1B visa or a green card.

How can Path2Papers help?

Path2Papers (P2P) is a pro bono project housed in Cornell Law School’s Immigration Law & Advocacy Clinic that helps Dreamers* pursue work visas and other pathways to lawful permanent residency. Experienced immigration attorneys are available to provide free legal consultations to Dreamers and their employers. P2P also connects nonprofits, colleges and universities, and government agencies who sponsor Dreamers with pro bono legal representation.

For more information about work visas, [read our resources](#).¹⁶ If you are a Dreamer or employ a Dreamer, sign up for a [free individual consultation](#) with P2P’s legal team.¹⁷

**We define Dreamers as having arrived to the U.S. before 21 years old and before 2022 and graduated from a U.S. high school.*

¹⁵ In specific circumstances, there are arguments that this “unlawful presence” bar does not apply. More details can be found at

<https://sites.lawschool.cornell.edu/path2papers/resources/resources-for-immigration-attorneys/adjustment-of-status-guide-for-former-daca-beneficiaries-with-a-d3-waiver-due-to-a-3-or-10-year-bar/>.

¹⁶ <https://sites.lawschool.cornell.edu/path2papers/resources/>

¹⁷ <https://sites.lawschool.cornell.edu/path2papers/consultations/>



An Introduction to Employment-Based Green Cards for K-12 Employees

Authors: Megan Kludt, Miguel Bocanegra, and the Path2Papers legal team

If you are in Deferred Action for Childhood Arrivals (DACA) or another vulnerable immigration status, such as Temporary Protected Status (TPS), and are employed in a full-time, permanent position at your school, your employer could sponsor you for lawful permanent residence status (a “green card”) in the United States.

Since 2024, Path2Papers has consulted with 85+ K-12 staff and 82% are potentially eligible for the employer-sponsored green card process. We have spoken to teachers, school counselors and principals, and some have already started the process. Employer-sponsored green cards are also available to administrative workers, accountants, bus drivers, food service workers, or any other position in the K-12 setting that is full-time and permanent.

This is usually a 3-stage, multi-year process that requires support from your school, especially in the first stage, as you will see below. During Step 1, your employer requests a “Labor Certification” (also known as PERM) from the Department of Labor (DOL). To obtain this, the employer must obtain wage approval from the DOL and conduct special recruitment to show that you will not be displacing U.S. Citizen workers or undercutting their wages. During Step 2, your employer files an immigrant visa application, known as a petition, with the United States Citizenship and Immigration Service (USCIS). Step 3 is your final green card application, which often must be completed outside of the U.S.¹

The entire process usually takes 3-5 years, but some cases may take longer depending on the applicant’s immigration history and country of origin. Although the process takes significant time and effort, green cards come with valuable benefits and protections - they allow you to live and work in the U.S. indefinitely, travel outside of the country more easily, and provide stronger protections from deportation. You can also sponsor certain family members for green cards, and after 5 years with a

¹ Some workers are able to bypass Step 1 (Labor Certification). For example, nurses and physical therapists do not need DOL approval because they are part of a recognized labor shortage in those fields. There is also a National Interest Waiver category for people with an advanced degree (or equivalent) and have a proven history of unique and impressive accomplishments in a field that will benefit the U.S. You can read more about the National Interest Waiver at

<https://sites.lawschool.cornell.edu/path2papers/resources/understanding-the-national-interest-waiver-a-path-to-the-green-card/>

green card, you can apply for U.S. citizenship. This resource provides an overview on PERM for K-12, and more details can be found [here](#).² If you are in higher education, there may be additional options that you can review in this [summary](#),³ along with more detailed guides at [path2papers.org](#). Please note, the following is not legal advice. Please consult an experienced immigration attorney with any legal questions.

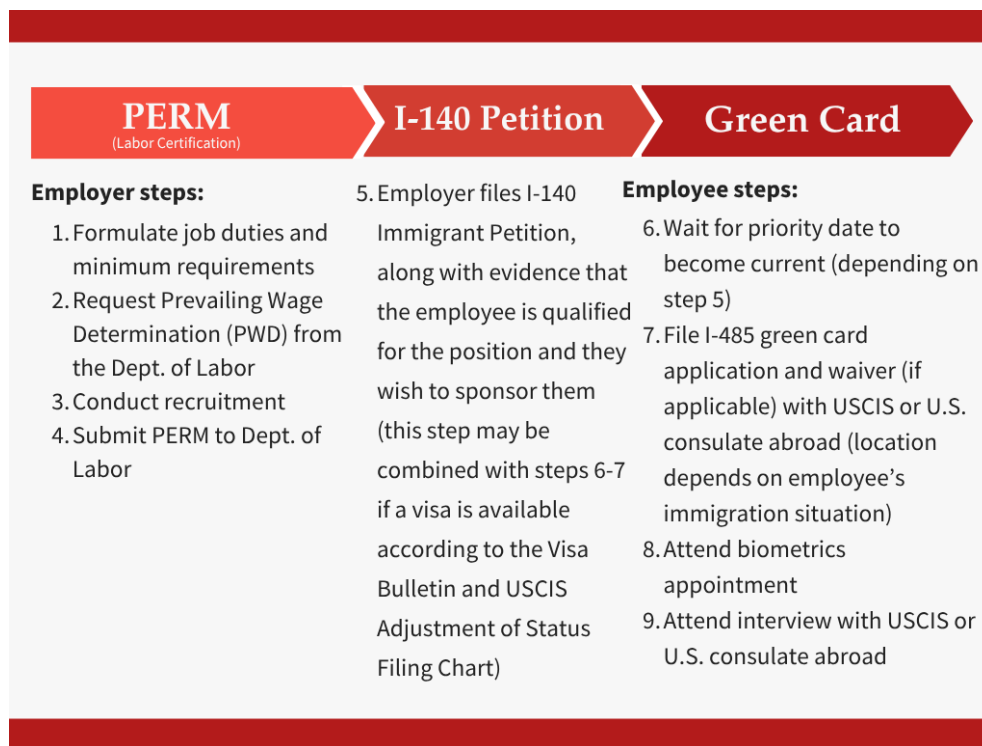


Figure 1: Green Card to PERM Roadmap. This chart outlines the process of obtaining a green card through the PERM labor certification, detailing the steps involved in securing a green card in the U.S. For more information, click [here](#).⁴

Step 1: Labor Certification or Program Electronic Review Management (PERM)

For employment-based green cards, the journey usually starts with the Department of Labor (DOL) and a Labor Certification. We commonly refer to this stage as “PERM,” named for the electronic system used to file the form.

²<https://sites.lawschool.cornell.edu/path2papers/resources/green-card-application-through-perm-common-questions/>

³<https://sites.lawschool.cornell.edu/path2papers/resources/employment-based-immigration-101-for-dreamers-and-employers/>

⁴<https://sites.lawschool.cornell.edu/path2papers/resources/a-step-by-step-timeline-of-the-employment-based-green-card-application-via-perm/>

Prevailing Wage Determination

First, your school will need to send a description of the job duties, requirements, and proposed wage to the DOL for a “wage determination.” The DOL will issue a wage determination that is consistent with their data for your occupation and location. If your position is covered under a Collective Bargaining Agreement (CBA) negotiated by your union, the DOL will usually sign off on your CBA wage.

Testing the Market

Your employer will need to advertise your position for at least one month to satisfy the DOL’s requirement that there are no U.S. Citizen workers who are “able, willing, qualified and available” for your role. Immigration law has specific instructions on how this recruitment must be carried out and the records the employer must keep. They should work closely with an experienced immigration lawyer to ensure the law is followed exactly. Your school also needs to notify the union of the posting, or, if it is not a union role, post a notice about this in a visible location at your worksite.

***Note:** If your employer places an ad for your position and finds a qualified U.S. candidate, they are **not** required to hire that person in your place. It just means that they cannot proceed with sponsorship at that time. They can always try again in the future.*

As of April 2026, wage determinations are taking 4-5 months, and the full recruitment process is taking about 2 months. Once these steps are complete, the PERM application may be filed with DOL, where the application may be pending for at least 12-13 months by today’s processing times. Thus, expect Step 1 to take at least 18 months. It is often longer; processing times are subject to change and it often takes time at the outset for the attorney to gather the necessary information for the case and prepare the strategy.

The date that your PERM application is *filed* (not approved) is your “priority date.” This is an important date that determines how long you wait to complete your green card process in Step 3, and is explained more in the visa wait times section below. The time your application is pending with the DOL is not wasted time and will count towards the time you need to wait for a green card.

***Note:** The employer must cover all costs associated with the PERM process. This includes attorney fees, which often exceed \$6,000, and advertising costs, which can be over \$2,000 depending on your location. There are no restrictions on who pays the costs associated with Steps 2 and 3, or with any waiver process. Path2Papers can try to connect qualifying employers to attorneys who can provide free or low-cost representation to try to alleviate the attorney costs.*

Step 2: I-140 Immigrant Visa Petition

Once you have your Labor Certification, your employer can move on to Step 2, filing an immigrant visa petition for you with USCIS. This is filed on Form I-140. During this step, USCIS will review whether the job offer appears to be real, whether your school has the ability to pay your wage, and whether you meet the qualifications for the position.

Note: If the school indicated at Step 1 that your job required specific education, experience, credentials, or skills, you will have to submit proof of all that with this petition. If the school told the DOL that the position required experience, you will now have to provide letters from past employers confirming that you have that experience.

This process takes about 6-10 months. It can be expedited, but it is best to talk to your immigration attorney about whether that is worth the extra cost.

Priority Dates and Wait Times to Reach Step 3

Green Card Quota

Unfortunately, most green cards in employment-based categories are subject to annual quotas. For almost every category, there are more people applying for green cards than the number of green cards available each year. For this reason, most green card categories have a first come-first served wait list, where your spot in line is determined by your “priority date” (which is determined by your PERM filing date). You can think of your “priority date” as your number on the wait list. Each month, the government puts out a “visa bulletin” to say which priority dates can now move forward to Step 3.

The green card categories are outlined below. Your green card category, called a “preference classification” is determined based on your qualifications for a green card, whether that’s through education, work experience, or abilities. There are typically four green card categories in the employment context. The first two categories, EB-1 and EB-2, are more likely to apply to faculty working in higher education. The third category, EB-3, specifically EB-3 Professionals, is the most common for teachers in K-12. Non-teaching positions may fit into any of these categories, depending on the position.

- **EB-1: Extraordinary Ability, Outstanding Researcher/Professor, Intracompany Transfers⁵**
- **EB-2: Advanced Degree:** This category is for positions that require a master’s degree or higher.
- **EB-3: Skilled Worker and Professionals:** This category is for positions that require at least a bachelor’s degree OR at least 2 years of experience. Most K-12 educators fall into this category.
- **Other Workers:** This category is for positions that require less than a bachelor’s degree or two years of experience.

Step 3: Green Card Application

This is the final step in the employment-based green card process, which would allow you to live and work in the U.S. permanently.

⁵ You can read more about achievement-based immigration categories, including the EB-1 green card category here: <https://sites.lawschool.cornell.edu/path2papers/resources/documentation-and-reference-letters-for-achievement-based-petitions-o-1-eb-1-and-eb-2/>

Adjustment of Status vs. Consular Processing

Adjustment of Status is the process of filing a green card in the U.S. with USCIS using form I-485. Some employees who are [245\(i\) eligible](#)⁶ or who have already left the U.S. and returned on a temporary visa may be able to apply for Adjustment of Status, which means they can file and complete the green card interview inside the U.S. Most employees will have to process their green card outside of the U.S. at the U.S. Embassy or Consular Office in their country of origin. This is called “consular processing.”

***Note:** If you are pursuing the green card through “consular processing,” most of the process is completed in the U.S. through the National Visa Center. They will collect your fees and documents and then send them to the Embassy for your final interview. The final trip for the green card interview typically takes 2-3 weeks. It is possible that it will take longer if there are additional questions about your case. This would be something to discuss with your immigration attorney.*

Do I need to go through a waiver process before I can get a green card?

If you have certain immigration violations, you may need to have a “waiver” approved before you can complete your green card process. Some immigration violations can be “waived” or excused by the government. The most common of these violations is having 180 days or more of “unlawful presence,” which causes you to trigger a 3- or 10-year bar when you leave the country for your green card interview. “Unlawful presence” includes anytime you were in the U.S. without authorized status after the age of 18. There are different rules around unlawful presence depending on your status. For example, many DACA holders never accrued unlawful presence because they were approved for DACA before they turned 18 and have not had any gaps in approval. You should consult with an immigration attorney about any unauthorized time in the U.S. to understand whether this applies to you.

Specifically, for the unlawful presence bar, you can file a waiver on form I-601A showing that you have a “qualifying relative” who would suffer extreme hardship if you were not allowed to complete the green card process and had to relocate to your country of origin for 10 years. For this waiver, a “qualifying relative” is a parent or spouse that has a green card or U.S. citizenship.

Persons may have other immigration violations, such as certain criminal conduct, that could prevent them from obtaining a green card. It is critical to consult with an immigration attorney about your unique circumstances and learn 1) whether you have any violations that would prevent you from getting the green card, 2) whether you are eligible for a waiver if you do have violations, and 3) if you are not eligible for a waiver, what your other options may be, if any.

How can Path2Papers help?

Path2Papers (P2P) is a pro bono project housed in Cornell Law School’s Immigration Law & Advocacy Clinic that helps Dreamers* pursue work visas and other pathways to lawful permanent residency.

⁶ <https://www.fwd.us/news/what-is-section-245i/>

Experienced immigration attorneys are available to provide free legal consultations to Dreamers and their employers. P2P also connects nonprofits, colleges and universities, and government agencies who sponsor Dreamers with pro bono legal representation.

For more information about work visas, [read our resources](#).⁷ If you are a Dreamer or employ a Dreamer, sign up for a [free individual consultation](#)⁸ with P2P's legal team.

**We define Dreamers as having arrived to the U.S. before 21 years old and before 2022 and graduated from a U.S. high school.*

⁷ <https://sites.lawschool.cornell.edu/path2papers/resources/>

⁸ <https://sites.lawschool.cornell.edu/path2papers/consultations/>



Cornell Law School

Path2Papers Project

*Bridging Opportunities for
DACA Workers and Employers*

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Understanding H-1B for DACA Recipients: Benefits, Risks, and Strategies

Author: Krsna Avila, Raju Patel

What is an H-1B?

The H-1B is a temporary visa designed for professional workers, typically requiring at least a bachelor's degree or its equivalent. The degree must be directly related to the duties associated with the job position. To determine eligibility for an H-1B, the government often examines the educational qualifications of others in similar roles within the same company and across the industry.

An H-1B visa is initially granted for three years and may be extended for an additional three years, allowing a maximum stay in the United States of six years. There are limited circumstances, where an H-1B can be extended past the six years.

Do I Lose DACA if I Obtain an H-1B?

Yes: a person loses their DACA when they leave the United States and re-enter in H-1B status. They cannot get DACA back once they have re-entered in H-1B status. However, simply applying for an H-1B does not terminate a person's DACA. The process of obtaining an H-1B begins with an employer filing an H-1B petition on behalf of the individual. If the petition is approved, the DACA recipient has three years from the date of the approval to schedule an interview at a U.S. embassy or consulate abroad to obtain the H-1B visa. Until the individual departs the U.S. and returns in H-1B status after the interview, they retain their DACA benefits.

A potential strategy for some individuals is to secure an approved H-1B petition now but delay traveling abroad and activating the H-1B status until DACA is eliminated or other circumstances necessitate the change. The process of applying for an H-1B can take time. It involves discussions with the employer, the preparation and filing of the H-1B petition by the employer, and government approval. Because of the lengthy process and uncertainty of DACA, some people may choose to take these preliminary steps in advance to be prepared, if DACA is eliminated in the future. .

Is It Worth Changing From DACA to H-1B?

The decision to switch from DACA to H-1B depends on an individual's unique circumstances. For most DACA recipients, an H-1B is a means to move forward with other permanent solutions and is not an end in and of itself. Each option has distinct advantages and disadvantages, and

consulting with an attorney can help determine your best path based on your goals and situation.

DACA offers significant flexibility because it provides an unrestricted work permit. DACA is not tied to a specific employer, job, or location, which allows recipients to work for any employer—or not work at all—without restrictions. This flexibility makes DACA an attractive option for individuals who prioritize freedom in their employment choices or who do not wish to commit to a particular career path.

However, DACA has faced significant legal and political challenges since its creation in 2012 and could be terminated in the future. For DACA recipients who aren't immediately eligible for another option, the end of DACA could mean choosing between either being undocumented and without work authorization, or switching to an H-1B.

H-1B, on the other hand, is established by federal statute, making it unlikely to be terminated. Unlike DACA, H-1B is considered a "lawful status." However, H-1B is employer and job specific, meaning the employee can only work for the employer, in the position and location that was listed in the H-1B petition, unless a new H-1B application is filed. H-1B is only valid for an initial period of three years, with a single three-year extension allowed (with limited options to extend past the six years). Note that even an extension is never guaranteed.

However, an H-1B can open the door to transitioning to other visa statuses or pursuing employment-based green cards from within the U.S. if an individual is separately eligible for them. H-1B status also allows persons to travel abroad without needing advance parole, making international travel more straightforward compared to DACA.

Ultimately, deciding whether to switch from DACA to H-1B requires weighing the benefits and limitations of each option. For some, the stability and opportunities provided by H-1B outweigh the risks and restrictions. For others, DACA's flexibility and fewer immediate barriers make it the preferred choice. Consulting with an experienced immigration attorney can help you make an informed decision tailored to your circumstances.

What Is Happening With DACA?

As of the end of September 2025, DACA remains unchanged nationwide, with no significant updates or policy shifts. We are currently awaiting a ruling from the federal district court in Texas that is expected to clarify several key issues: whether DACA will continue in its current form across all states except Texas, whether DACA recipients residing in Texas may lose their employment authorization, and whether U.S. Citizenship and Immigration Services (USCIS) will resume processing initial DACA applications. These pending decisions are significant and may impact whether individuals should consider transitioning to H-1B status or can feel secure maintaining their current protection under DACA in the near term.

See our resource [DACA and Advance Parole Updates and Trends](#) for more information.

Would I Have a 3- or 10-Year Bar If I Obtain an H-1B?

One significant challenge for DACA recipients is that they must leave the United States to obtain the H-1B visa at a U.S. consulate or embassy. DACA recipients who have accrued more than 180 days of unlawful presence in the United States can trigger a 3- or 10-year bar when leaving the United States to obtain their H-1B visa. This would mean that a person could be barred from obtaining lawful status for either 3 or 10 years.

A person begins accruing unlawful presence at age 18 if they are out of status or do not have DACA by that age. Therefore, if the person obtained their first DACA approval more than 180 days after their 18th birthday, they would have to worry about these bars. Persons who have more than 180 days of unlawful presence but less than a year could trigger a 3-year bar when departing, and persons with a year or more could trigger a 10-year bar.

A waiver, known as a [D3 waiver](#), can be submitted at the embassy or consulate to waive the 3- or 10-year bar. This waiver is commonly granted to people who were educated in the United States and are returning to the U.S. to work for an employer. Importantly, however, although the D3 waiver can forgive the 3- or 10-year bars for the H-1B, it would not waive it for an application for lawful permanent residence (green card). This means that persons might have a 3- or 10-year bar on their record for other purposes outside of the H-1B. Although there is another waiver known as an I-601 for lawful permanent residence, not everyone qualifies. We explain this separate waiver in the questions below.

Will Everyone Have a 3- or 10-Year Bar?

We have found that about 40% of DACA recipients do not have more than 180 days of unlawful presence, and therefore do not have to worry about triggering a 3- or 10-year bar. For others, the law is unclear on whether DACA recipients, who travel to their consulate interview with advance parole, trigger these bars. A pivotal immigration case known as *Matter of Arrabally and Yerrabelly* determined that leaving the United States on advance parole does not constitute a "departure" for the purposes of these bars. However, that case involved individuals who left and returned under the same status. For instance, a DACA recipient who travels on advance parole and re-enters the U.S. with DACA does not trigger these bars. It remains unclear, though, whether someone who departs on advance parole and seeks to re-enter under a different status, such as H-1B, would also avoid triggering the bars.

Some consulate immigration officers have approved H-1B visas for former DACA recipients without requiring a D3 waiver, recognizing that DACA recipients with more than 180 days of unlawful presence who travel on advance parole for their consulate interview do not trigger the inadmissibility bars. However, other officers have required the D3 waiver. Until this area of law is resolved, we recommend that DACA recipients, with more than 180 days of unlawful

presence, always prepare for the possibility that they could have a 3- or 10-year bar on their record after re-entering on the H-1B.

What Are My Options If I Have a 3- or 10-Year Bar After Re-Entering on an H-1B?

As explained above, although the D3 waiver could waive the 3- or 10-year bars for the H-1B, it cannot waive it for other options, such as an application for lawful permanent residence. There is a separate waiver for lawful permanent resident applications known as an I-601 waiver, but the requirements are unrelated to a person's job. The I-601 waiver requires showing that a U.S. citizen or lawful permanent spouse or parent will suffer extreme hardship if you have to wait 3 or 10 years to receive your green card.

There have also been at least two cases in 2025, where the individuals travelled on advance parole, obtained a D3 waiver, returned in H-1B status, and then made the argument to USCIS that they did not trigger the bar. USCIS approved the green cards in both of these cases. However, until this area of law is resolved and more cases are approved, there is no guarantee that this argument will continue to be successful.

If USCIS does not continue to approve these cases, there is a separate policy that allows persons who are lawfully admitted into the United States, such as on an H-1B, to serve the 3- or 10-year bar inside the United States. This means that persons who have a 3-year bar can simply be in H-1B status for three years, and then apply for lawful permanent residence if they are separately eligible. For persons with a 10-year bar who are not eligible for the I-601 waiver, there could be creative ways to wait out the 10 years, but you would want to have a long-term plan in place before obtaining an H-1B. Persons can usually only have H-1B for a total of 3 years, and can try to extend it once for a total of 6 years. Note that an extension is never guaranteed.

For more information on this topic, read our resource titled, "[Immigration Options After a DACA Beneficiary Returns to the United States with an H-1B and D3 Waiver.](#)"

Should I Ask My Employer to Sponsor Me For Lawful Permanent Residence Instead of an H-1B?

Since lawful permanent residence is the ultimate goal, this is a critical question. If DACA recipients are not subject to the 3 or 10 year bars and are also eligible for an H-1B, it's worth discussing both options with an attorney.

The process to receive lawful permanent residence typically takes 3-5 years or longer. Therefore, the H-1B could be important for people to transition out of DACA while they wait on their green card, in the case DACA is terminated. It is possible, if DACA is not terminated, that people who are not subject to the 3 or 10 year bar could transition directly from DACA to a green card (via consular processing). Pursuing an H-1B first makes sense for some DACA recipients,

specifically those who are not subject to the 3 and 10 year bar. An H-1B provides a bridge to continue living and working in the U.S. while pursuing permanent residence, which is a multi-year process in most cases. However, as mentioned throughout this resource, this is an individualized decision for every DACA recipient.

Will Obtaining an H-1B Affect My Eligibility for Future Legislation?

This is a valid concern. A change in future legislation, like the DREAM Act, to provide a pathway to citizenship to persons with DACA is hard, but not impossible.

Historically, older versions of the DREAM Act excluded individuals who transitioned from DACA to H-1B and no longer held DACA status. However, Congressional offices are increasingly aware of the situation of former DACA recipients who have moved to H-1B but have not yet secured green cards. There is hope that any future legislation could consider those who previously held DACA.

It's also important to note that previous legislative attempts to pass the DREAM Act have failed multiple times, and Trump attempted to end DACA during his first term, a move that was blocked by the courts. Currently, DACA is being challenged in courts and there will always be a possibility that DACA could end in the future, leaving thousands without a stable solution.

