

An Important disclaimer - the information provided in these chats is not legal advice. Transmission of this information is not intended to create, and receipt by you does not constitute, an attorney-client relationship. Viewers must not act upon any information without first seeking advice from a qualified attorney.

MODERATOR: Welcome to chat with immigration attorney Alice Yardum-Hunter. She will be joining us soon. Our topic today is, "Employment and Family Visas to the U.S."

MODERATOR: ILW.COM is pleased to welcome our guest speaker today, Alice Yardum-Hunter, who has joined us.

Ms. Yardum-Hunter: Thank you for having me. It is a pleasure to be here with you.

MODERATOR: Thanks for joining us, and let us begin with the first question.

**Q: My I-485 was approved 3 months ago. My wife's I-485 is still pending because we got married after I had filed mine. I filed her I-485 eight months later. She has an EAD. My case was EB2/India/PD: 1/97. My question is: Can I change my job without affecting my wife's I-485 process? Could INS send an RFE asking questions about my employment even though I have already gotten my GC?**

A: If you filed for yourself as petitioner on the I-140, then it is irrelevant whom you work for. On the other hand, if an employer petitioned for you and there was some reason to believe that at some time prior to or after getting the green card that you did not plan on normally working for the employer just like any US worker, then INS would have the right to inquire about your intention.

**Q: For a US permanent resident I understand there is a 30-month stay required prior to applying for US citizenship. Do these thirty months have to be consecutive? Is there any maximum allowable absence from the country?**

A: There is no 30-month stay. I think what you may be asking is how long a person needs to be in the US during the 5 years after getting permanent residence...If that is your question, then you are right that one must be in the US for 2½ out of the last 5 years (for most applicants). This 2½ years is 30 months.

**Q: Thanks for your answer about the 2½ year stay for citizenship. Does that stay have to be consecutive? How long can I be absent from the country?**

A: No, the stay doesn't have to be consecutive. You may be gone without problem for up to 6 months. You can have problems if you're gone beyond 6 months, and if you're gone for more than one year, you have to start counting the time again.

**Q: Does a non-family sponsorship scheme exist?**

A: Yes. There are many ways to legally acquire temporary and permanent visas to the US. The scope of the options available to you is beyond what I can explain here in a few minutes. You should seek specific consultation regarding your particular situation.

**Q: Any expectation for this year H-1B cutoff date?**

A: No one really knows, but it could be in April 2000. On the other hand, that may be early. My advice is to file as soon as possible.

**Q: I am in H-1B status. My EB I-485 is pending and I have an EAD card. Will I lose my H-1B status if I take a part time job for another employer while working for my current employer who sponsored my H-1B? How about starting a small business, such as consulting business. Will that violate my H-1B status?**

A: You may be employed with the EAD working for anyone, including yourself. This is beyond the bounds of the H-1B which is OK though because you are pending for adjustment of status. You can also continue working for your H-1B employer. The only time a problem would be created would be if for some reason your I-485 were denied.

**Q: My employers have petitioned for me and I have an excellent relationship with them even now. How does INS suspect my intention when I have been with my employer for close to four years now, and I am well qualified in the field? Would they still normally question it?**

A: I don't know how INS comes to believe your employment relationship is suspect. It could be that a disgruntled employee contacts them. This is not something to worry about during the course of an immigration procedure when the relationship is *bona fide*. *Bona fide* relationships can be documented with evidence, which should be provided to the INS. I would not say that they normally ask for evidence other than the typical type, such as letters and tax returns from employer, and W-2 or pay stubs from the employee, but INS is entitled to request further rational evidence to prove eligibility for status.

**Q: Can someone from a Visa Waiver country receive a K-1 visa?**

A: Sure, why not? As long as your fiancé is a US citizen. The K-1 may or may not be suitable for you though. You should seek further consultation.

**Q: What happens if someone from a Visa Waiver country enters the US on a visa waiver, and gets engaged? Can they obtain a K-1 abroad?**

A: Yes, on the assumption that your fiancé is a US citizen. However, if you will marry in the US, then you may apply for the relative petition and adjustment of status in the US. To get the K-1 you must depart the US, and that may not make sense, depending on your plans. If you marry abroad, you would apply for the petition either at the INS office in the jurisdiction where the spouse lives after the wedding. Sometimes consulates will adjudicate petitions, and you would have to then visa process. If you do this, be prepared to wait outside of the US for up to a year.

**Q: I am a Ph.D. student expecting to graduate next year. I will try to get an employment based GC. My brother will become a US citizen also next year. Does it hurt at all for him to apply for a family based GC for me? I know it takes more than twelve years.**

A: It may hurt if in the future you apply for a nonimmigrant visa that did not allow dual intent. Dual intent means that for some nonimmigrants, one may have the intention of being in the US temporarily now, and permanently in the future. The rub is that if your brother applies files an immigrant petition and you later apply for a nonimmigrant classification that does not recognize dual intent, it may be difficult to convince a consular officer that your intention on the temporary visa is a temporary intent. This kind of thing may be difficult to prove.

**Q: As a visitor on a Visa Waiver having been offered employment in the US, what is my first step?**

A: I need more information to answer this question. What kind of job and what's your highest degree of education?

**Q: The job is Graphic Artist/Web Designer. I have the initial difficulty of no "degree" qualification, however, I do have nearly 20 yrs "hand-on" experience in the graphics field.**

A: This additional information was from a prior question about a visa waiver entrant who has been offered a job. I requested further information from him/her. Positions in graphic art historically were problematic in qualifying for H-1 status, however, about 10 years ago, DOL began recognizing it as a field in transition, meaning that the position began to require a bachelor's degree to perform. For many years, graphic designers routinely then qualified for H-1 professional status. In recent months, however, INS, most notably in California, has begun taking the position that graphic designers do not require a degree and therefore they cannot qualify for H-1 status. These cases are approvable with good documentation of the need for the position to require a degree. Your 20 years of experience may possibly be substituted for the minimal bachelors degree. Given that you arrived in the US on the visa waiver, you will have to return abroad to get the H-1 visa issued.

**Q: Can you please tell me, does marrying a US citizen automatically allow one to stay in America?**

A: No. Very little in the immigration laws is automatic! You must still apply for permanent residence to stay indefinitely.

**Q: Does being an H-1B holder in certain state make my wife eligible for in-state tuition in that state's university?**

A: This is not an immigration question, but one of state education law. You need to ask this question to a local attorney in your state who knows about residence requirements for educational purposes.

**Q: Does RIR mean reduction in recruitment, and how long does it take?**

A: Yes it does, and the timing depends on your jurisdiction. Here in California cases received at DOL the end of November 1999 are being processed.

**Q: How long would the RIR process for the green card take? Must I have a Ph.D. to be on RIR track?**

A: The first part of this question has been answered. No, you don't need a PhD, or any particular education to qualify for RIR. The theory of RIR is based on the position being a shortage occupation, and there is no limitation specified as to the type of job that can be accepted here in California. Some other jurisdictions include particular jobs. In NY, ethnic specialty cooks, and nannies are in short supply.

**Q: If my I-485 has been filed based on a labor certification, and it is still pending, can I change employers?**

A: I would think you could do that only in rare circumstances where you could show that you needed to leave your LC employer for a specific, possibly job-related reason, however, you would have to return to the employer who sponsored you and work for them for a reasonable time after getting the green card.

**Q: Are there any income requirements for a US citizen to sponsor someone for K-1?**

A: Some consulates require the new affidavit of support form, in which case there is an income requirement. Other consulates let you use the old form, in which case there is no minimum income requirement.

**Q: How long does it take for processing an I-485 with a US citizen spouse as a petitioner?**

A: Just like the last questions-depends where it's filed.

**Q: My wife entered the US on a H-4 Visa. She applied for and obtained F-1 status and is now studying. Before she obtained her F-1 status she traveled outside the country while F-1 was in process. Her entry stamp into the country is two days after her approval date on the F-1 visa. Does she have to send in her passport for a fresh stamping? Is it better to do it in the country of birth? Can she travel to Canada for a short trip without being refused entry back into the US?**

A: You require more specific consultation than is possible in this forum.

**Q: What, if any, are the restrictions on travel and/or extended stay abroad for a permanent resident who has already applied for US citizenship, and who is waiting for the approval?**

A: The rules are the same. By the way, there is a requirement that prior to filing, one must live in the jurisdiction where the application is filed for 3 months.

**Q: I am on a H-1B visa and my wife has an F-1. If my employer withdraws my H-1B can I continue to stay on as F-2 and then find another employer and do a transfer to the fresh H-1B?**

A: Yes.

**Q: Hi, thanks in advance for the opportunity to get answers to my questions. My question is related to the H-1B status. I was offered a job to work as an orthodontic lab technician. I have a bachelor's degree in dentistry, but I am not licensed to practice in the US yet. I have a statement from a prominent member of the immigration bar in New York City which says, "a position that would not require a bachelor's degree for entry into the field may qualify as specialty occupation if the position is so complex or unique that only a person with a degree can perform the requisite duties."**

A: One of the ways of showing that a position requires a degree is by showing that the position is so complex as to require the knowledge associated with a degree. I believe you would have a very hard time proving that any orthodontic lab technician position requires a degree, but I suppose there may be the odd exception. Whether a position is so complex as to require a person with a minimum of a bachelor's degree is a matter of factual analysis. It has to do with explaining what about the specific duties involves use of knowledge acquired through a specific course of studies.

**Q: I changed employers, but did not change the visa stamping on my wife's passport. She is on H-4. Her I-94 expired in September 1999. Does she have to travel outside the US to get a fresh H-4 visa stamping based on my new employer? Is this a major violation and can she be denied visa stamping and/or entry?**

A: Yes, she must travel abroad, unless the reason for not applying was not her fault. Depending on when in September the I-94 expired, she may now be unlawfully present in the US. This issue requires further consultation as it is very complex.

**Q: What is the length of the RIR application process for an EB-1 priority worker status or EB-2 professional with advanced degrees?**

A: RIR has nothing to do with the EB-1 or EB-2 characterization. EB-3 qualifies too. RIR is a DOL procedure, and the EB categories are INS distinctions. They're different "animals."

**Q: I have a Ph.D. in Economics, but have not been employed as an economist for over ten years. Would this be held against me if I apply for a green card through an employer?**

A: This would be a factor to certainly be explained, and one would hope that what you have been doing for 10 years wouldn't make your knowledge in your field stale.

**Q: I married a US citizen in 1985, and she filed for my GC. My file was adjusted for GC. We got divorced and I left the country. I came back and my new company has filed for my I-485. Will my previous record help me in getting GC fast?**

A: No.

**Q: Does it matter whether the company applying for one's Green Card is small or big, established or new?**

A: Unfortunately, it is more difficult for tiny companies than for Fortune 500 companies to legitimize themselves in the eyes of INS. That does not mean that you cannot get permanent residence through small or new companies. What you need to assist you though, is immigration counsel experienced in those sorts of matters.

**Q: Most of the discussions about green cards seem to center around H-1B visas. I was wondering if you would comment on an L-1 conversion to a green card in terms of what happens in the process after someone has been called for fingerprinting. I'm not from India, Philippines, Mexico or China.**

A: We require more information to answer this.

Moderator: I would like to thank Ms. Alice Yardum-Hunter, for chatting with us today.

Ms. Yardum-Hunter: Thanks again for having me.

MODERATOR: To contact the attorney, please visit her website at <http://www.ilw.com/yardum-hunter/>. We have frequent chats scheduled at <http://www.ilw.com/chat/calendar/>.

© Copyright 2000 ILW.COM