Immigration: Myths and Reality

By Jacob Monty

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1) Helping undocumented employees, Harder than you think

2) Immigration Status vs. Authorization to stay in the United States
Welcome to Our Home Page of Fake Documents

Buy fake and real passports, ID cards, driver license online purchase registered and unregistered passport of all countries. Visas, biometric passport degrees, drivers license, ID cards. Training certificates M GCSE, A-levels, High School Diploma, Certificates, GMAT, MCAT, and Certificates. Novelty Birth, Marriage, and Death Certificates, Novelty Passports and New Identity Packages, Replicated, False Degrees/Diplomas from most post-secondary institutions from around the world (we have over 3000 templates on file) all designed to look 100% identical to the original. Custom Printing. We use high quality equipment and materials to produce authentic and counterfeit documents. All secret features of real passports are carefully duplicated for our Registered and unregistered documents. Read More
MY SOCIAL SECURITY # IS
457-55-5462

I’m Todd Davis, CEO of LifeLock, and this really is my social security number. I give it just to prove how safe your identity can be with LifeLock. All of us, no matter how careful, can become victims of identity theft. In fact, every three seconds another identity is stolen.

Do you ever worry about identity theft? If so, it’s time you got to know LifeLock. We work to stop identity theft before it happens. We’re so confident, we back our clients with a $1 million dollar guarantee. If for any reason you fall victim to identity theft, we will spend up to $1 million to hire the finest professionals to repair the damage and restore your good name. Period.

Security, peace of mind, protection – that’s what LifeLock provides, along with the added bonus of reduced junk mail and pre-approved credit card offers. Normally it’s just $10 a month, but now you can try us free for 30 days. Protect yourself, your family and all you’ve worked for. Guarantee your good name today.

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Here’s what LifeLock offers you:

- Proactive Identity Theft Protection
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- Reduction of Credit Card Offers
- Free Annual Credit Reports

We order your annual free credit report for you.

MONTY & RAMIREZ LLP
EMPLOYMENT | LABOR | IMMIGRATION
Employers must verify that individuals are eligible to work by obtaining a Form I-9 and inspecting the required supporting documents at the time of hiring.

Employees must provide employers with documents that show (1) identity and (2) employment eligibility.

Employees must also attest under penalty of perjury that they are either U.S. nationals or aliens authorized to work in the United States.
### List of Acceptable Documents

<table>
<thead>
<tr>
<th>LIST A</th>
<th>Documents that Establish Both Identity and Employment Authorization</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>U.S. Passport or U.S. Passport Card</td>
</tr>
<tr>
<td>2.</td>
<td>Permanent Resident Card or Alien Registration Receipt Card (Form I-551)</td>
</tr>
<tr>
<td>3.</td>
<td>Foreign passport that contains a temporary 10-year stamp or temporary 5-year printed notation on a machine-readable immigrant visa</td>
</tr>
<tr>
<td>4.</td>
<td>Employment Authorization Document that contains a photograph (Form I-766)</td>
</tr>
<tr>
<td>5.</td>
<td>For a nonimmigrant alien authorized to work for a specific employer because of his or her status:</td>
</tr>
<tr>
<td></td>
<td>a. Foreign passport; and</td>
</tr>
<tr>
<td></td>
<td>b. Form I-94 or Form I-94A that has the following:</td>
</tr>
<tr>
<td></td>
<td>(1) The same name as the passport; and</td>
</tr>
<tr>
<td></td>
<td>(2) An endorsement of the alien’s nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.</td>
</tr>
<tr>
<td>6.</td>
<td>Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LIST B</th>
<th>Documents that Establish Identity AND Employment Authorization</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Driver’s license or ID card issued by a State or district of Columbia that contains a photograph or information such as name, date of birth, gender, height, eye color, and address</td>
</tr>
<tr>
<td>2.</td>
<td>ID card issued by federal, state or local government agencies or entities provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address</td>
</tr>
<tr>
<td>3.</td>
<td>School ID card with a photograph</td>
</tr>
<tr>
<td>4.</td>
<td>Voter’s registration card</td>
</tr>
<tr>
<td>5.</td>
<td>U.S. Military card or draft record</td>
</tr>
<tr>
<td>6.</td>
<td>Military dependent’s ID card</td>
</tr>
<tr>
<td>7.</td>
<td>U.S. Coast Guard Merchant Mariner Card</td>
</tr>
<tr>
<td>8.</td>
<td>Native American tribal document</td>
</tr>
<tr>
<td>9.</td>
<td>Driver’s license issued by a Canadian or Mexican government authority</td>
</tr>
<tr>
<td>10.</td>
<td>For persons under age 18 who are unable to present a document listed above:</td>
</tr>
<tr>
<td></td>
<td>a. School record or report card</td>
</tr>
<tr>
<td></td>
<td>b. Clinic, doctor, or hospital record</td>
</tr>
<tr>
<td></td>
<td>c. Day-care or nursery school record</td>
</tr>
<tr>
<td>11.</td>
<td>A Social Security Account Number card unless the card includes one of the following restrictions:</td>
</tr>
<tr>
<td></td>
<td>(1) NOT VALID FOR EMPLOYMENT</td>
</tr>
<tr>
<td></td>
<td>(2) VALID FOR WORK ONLY WITH INS AUTHORIZATION</td>
</tr>
<tr>
<td></td>
<td>(3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION</td>
</tr>
<tr>
<td>12.</td>
<td>For a nonimmigrant alien authorized to work for a specific employer because of his or her status:</td>
</tr>
<tr>
<td></td>
<td>a. Foreign passport; and</td>
</tr>
<tr>
<td></td>
<td>b. Form I-94 or Form I-94A that has the following:</td>
</tr>
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<td></td>
<td>(1) The same name as the passport; and</td>
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<td></td>
<td>(2) An endorsement of the alien’s nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.</td>
</tr>
</tbody>
</table>
| 13.    | Certification of Birth 
| 14.    | Certificate of Birth issued by the Department of State (Form FS-545) |
| 15.    | Certificate of Report of Birth issued by the Department of State (Form DS-1586) |
| 16.    | Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal |
| 17.    | Native American tribal document |
| 18.    | U.S. Citizen ID Card (Form I-197) |
| 19.    | Identification Card for Use of Resident Citizen in the United States (Form I-179) |
| 20.    | Employment authorization document issued by the Department of Homeland Security |
What should you know?

• An employer is liable under IRCA for “knowingly” hiring or continuing to hire unauthorized aliens.

• Liability is not limited to those situations in which the employer has actual knowledge that an employee is not authorized to work.

• Regulations define “knowledge” to include constructive knowledge, as well as actual knowledge, which may be inferred through certain circumstances.
Recruitment Questions about Immigration Status

• Non-Discrimination Requirement
  • Recruiters NOT allowed to ask “Are you a U.S. Citizen?” or “Do you have a Green Card?”
  • Recruiters NOT allowed to request specific documents or to require “more or different” documents than the minimum required.
Panda Express Case

- Department of Justice
- Wednesday, June 28, 2017
- Justice Department Settles Immigration-Related Discrimination Claim Against Panda Express

The Justice Department announced today that it reached a settlement agreement with Panda Restaurant Group, Inc. (Panda Express), a restaurant chain with over 1,800 locations in the United States. The agreement resolves the department’s investigation into whether Panda Express discriminated against non-U.S. citizens in violation of the Immigration and Nationality Act (INA) when reverifying their permission to work.

The department’s investigation concluded that Panda Express unnecessarily required lawful permanent resident workers to re-establish their work authorization when their Permanent Resident Cards expired, while not making similar requests to U.S. citizen workers when their documents expired. The investigation also revealed that Panda Express routinely required other non-U.S. citizen workers to produce immigration documents to reverify their ongoing work authorization despite evidence they had already provided sufficient documentation. The antidiscrimination provision of the INA prohibits such requests for documents when based on an employee’s citizenship status or national origin.

Under the settlement, Panda Express will pay a civil penalty of $400,000 to the United States, establish a $200,000 back pay fund to compensate workers who lost wages due to the company’s practices, train its human resources personnel on the requirements of the INA’s anti-discrimination provision, and be subject to departmental monitoring and reporting requirements.

“Employers should ensure that their reverification practices comply with laws that protect workers against discrimination,” said Acting Assistant Attorney General Tom Wheeler of the Civil Rights Division. “The Justice Department applauds Panda Express for its cooperation during this investigation and its commitment to compensating workers who may have lost wages due to its documentary practices.”

Work-authorized, non-U.S. citizens who lost work at Panda Express between May 31, 2014, and June 28, 2017, due to Panda Express’ documentary practices may be eligible for back pay for the wages they would have earned.
## Unauthorized Population by the Numbers

<table>
<thead>
<tr>
<th>Demographics</th>
<th>Estimate</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unauthorized population ages 16 and older</td>
<td>10,491,000</td>
<td>100%</td>
</tr>
<tr>
<td>Employed</td>
<td>7,003,000</td>
<td>67%</td>
</tr>
<tr>
<td>Married to a US citizen</td>
<td>1,247,000</td>
<td>12%</td>
</tr>
<tr>
<td>Married to a legal permanent resident (LPR)</td>
<td>746,000</td>
<td>7%</td>
</tr>
<tr>
<td>Reside with at least one US-citizen child</td>
<td>3,261,000</td>
<td>31%</td>
</tr>
<tr>
<td>Reside with no children</td>
<td>6,678,000</td>
<td>63%</td>
</tr>
<tr>
<td>Less than 5 years of US residence</td>
<td>2,009,000</td>
<td>18%</td>
</tr>
<tr>
<td>20 or more years of US residence</td>
<td>2,387,000</td>
<td>21%</td>
</tr>
</tbody>
</table>
Who can get relief?

• Forms of immigration relief include:
  • Discretionary relief
  • Cancellation of removal
  • Asylum
  • Adjustment of status
  • Voluntary departure
  • Administrative appeals and judicial review
Can you help your undocumented employees?

- I-601 Waiver:
  - Waives the “unlawful presence” and “misrepresentation” grounds of inadmissibility for foreign nationals who have a U.S. citizen or LPR spouse or parent
  - Should demonstrate “extreme hardship” to the citizen or LPR spouse or parent if waiving unlawful presence
3 and 10 Year Bars
(Only Applicable After April 1, 1997)

• **3 year bar**: Immigrant who enters United States without inspection, stays for more than 180 days but less than one year, then leaves the United States → **barred from re-entering US for 3 years**

• **10 year bar**: Immigrant who enters United States without inspection, stays for more than one year, then leaves United States → **barred from re-entering United States for 10 years**
3 and 10 Year Bars

• The catch: An immigrant who entered EWI or overstays their visa may need to leave the United States to apply for a green card abroad, but as soon as they depart, they are immediately barred from re-entering the country for three or ten years.

• Example: Michael entered the US without inspection in March 2000. In 2010 he gets married to a U.S. citizen. In order to seek adjustment of status, or obtain the green cards, he must leave the United States to apply for an immigration visa at the U.S. embassy in his home country. As soon as Michael leaves, he is barred from re-entering the United States for 10 years.
Avoiding the 3 and 10 Year Bars

• A waiver of the three- or ten-year bar is available, if the visa applicant is the spouse or child of a U.S. citizen of an LPR and only if the applicant can prove that the denial of the waiver would result in “extreme hardship” to the applicant’s citizen or permanent resident spouse or parent (qualifying relative). Hardship to the immigrant is not a factor, and hardship to the immigrant’s children is not a factor (only indirectly to the qualifying relative) (even if the children are U.S. citizens).
Foreign nationals seeking an I-601 waiver for unlawful presence, must show extreme hardship to a U.S. citizen or LPR spouse or parent:

- Health
- Financial considerations
- Education
- Personal considerations
- Special considerations
The law stated, from 1994 to 1998, if you were illegally in the United States and wanted to adjust your status, you could apply for adjustment of status by paying a penalty of $600.00. That penalty was increased in the year 1998 and was raised to $1,000.00.

That law extended under Bill Clinton until April 30, 2001.


In order to qualify under section 245i, you (or your parents while you were a minor) must have had a relative or an employer file a visa petition (forms I-130 and I-140) or a labor certification on the your behalf on or before April 30, 2001.

If the visa petition or labor certification was filed between January 15, 1998 and April 30, 2001, there is an additional requirement that you be present in the U.S. on December 21, 2000, the day the final extension of section 245(i) was signed into law.
When Derivatives May Adjust under 245(i)

- **Example.** Juan entered the United States illegally in 1997, is the beneficiary of a fourth preference petition filed on his behalf by his US citizen brother in 2000. The petition was approved. Juan married his undocumented wife, Juanita, in March 2001. When the F-4 priority date becomes current, both Juan and Juanita are eligible to adjust as grandfathered aliens under 245(i). Should he and his wife divorce before the F-4 becomes current, Juan can still adjust under 245(i) when it does become current, and Juanita can adjust under 245(i) should she become the beneficiary of a separate petition filed in her behalf, such as by a subsequent husband.

- **Example.** Same facts only Juan and Juanita marry in March 2013 and they stay married. Juanita is considered an after-acquired spouse. Juanita is not grandfathered under 245(i), but is still eligible to adjust with Juan under 245(i), regardless of when she entered the United States. Since she is not considered grandfathered, she could not divorce Juan, re-marry, be petitioned by an LPR or U.S. citizen spouse, and adjust under 245(i). She could only adjust under 245(i) as Juan’s derivative spouse.

- **Example.** The husband, Charlemagne, had a family-based petition filed in his behalf prior to April 30, 2001 by his first spouse, though the couple later divorced. Because the petition was considered approvable at the time of filing, Charlemagne was grandfathered under 245(i). However, in order to adjust, he needed a new petition filed in his behalf. He and his second wife, Vanessa, were married after April 30, 2001, thus making her an after-acquired spouse. But his second wife was also undocumented. Because she could not file a petition in his behalf, he could not take advantage of his grandfathered status based on their marriage.
In order to apply for parole-in-place, the person must:

1. Have a spouse, parent, or child who is a current or former member of the U.S. military;
2. Have not previously been admitted or paroled; and
3. Not have any adverse factors that would cause the application to be denied as a matter of discretion.

The military member must be:

- Serving in active duty of the U.S. Armed Forces;
- A current member of the Selected Reserve of the Ready Reserve; or
- A veteran who previously served in the U.S. Armed Forces or Selected Reserve of the Ready Reserve.

In order to serve in the military one must be either a U.S. citizen or a lawful permanent resident (LPR). Therefore, it is unlikely that the military member will not be in one of those two categories.

It is not necessary that the military member have served overseas or have been in combat.

Practitioners report that it is not necessary that the veteran – a term that is undefined – have been honorably discharged. Veterans certainly include those who served in World War II, the Vietnam War, and the Iraqi War. The term Selected Reserve of the Ready Reserve includes service in the National Guard.

No Previous Admission or Parole. The applicant for parole-in-place must not previously have been admitted or paroled into the United States. There is no requirement, however, that the applicant prove that he or she entered illegally.
Cancellation of Removal - Eligibility

For Non-LPRs:

- Has been physically present in the US for continuous period of 10 or more years
- Has been a person of good moral character for 10 years
- Has not been convicted of any offense under INA 212(a), 237(a)(2) or 237(a)(3)
- Establishes that removal would result in exceptional or extremely unusual hardship to US citizen or LPR spouse, parent, or child; and
- Warrants a favorable exercise of discretion
Three Immigration Myths

• “Just get in line”
• “Anchor Babies”
• “Money Solves Everything”
Just get in line

• **Myth:** Undocumented immigrants should just “wait in line” and enter the United States like legal immigrants did.

• **Reality:** There is no “line.” For millions of undocumented individuals, it is impossible for them to become legal or to adjust their status.
For many undocumented immigrants, there is no “line” they can stand in to adjust their status.

**Example:** Marco entered without inspection in 2004 and has been living and working in the United States for 15 years. He is married to a US citizen and has never been arrested. He has three US citizen children. Does he have a way to become a permanent resident? Maybe - there is no line for Marco. Even if he leaves the United States and waits 10 years, he will be able to adjust his status if his wife suffers “extreme hardship.”
Anchor Babies

• Myth: Immigrants can have a baby in the United States and then adjust their status.

• Reality: EWI parents of a U.S. citizen child must have a U.S. citizen spouse or parent to qualify for an I-601 waiver.
Anchor Babies

- **Example:** Cecilia entered without inspection and is married to an LPR spouse. They have a US citizen child, who is 21 years old. Can the child petition USCIS on behalf of Cecilia in order to adjust her status? No – Cecilia does not have a US citizen spouse or a US citizen parent. She cannot adjust her status and must leave the country in order to petition for adjustment.

- **Example:** Julian entered without inspection and has a US citizen child. Julian’s child is diagnosed with a terminal illness. Can Julian petition USCIS for a waiver of inadmissibility in order to lawfully remain in the United States to care for his child? No, in order to qualify for a waiver of inadmissibility, Julian must show extreme hardship to a US citizen parent or spouse. The hardship suffered by his US citizen child will not help him in immigration court.
Myth: With enough money and experienced attorneys, any immigration problem can be solved.

Reality: Immigrations rules are hard and fast – there are some situations that are impossible to fix with money.
Money Solves Everything

• **Example:** Yedoye entered without inspection is 1995. He is married to a US citizen and has been successful in his career, rising to become vice president of a large company. Can his company petition USCIS and pay a fee to keep their valuable company officer? No, Yedoye must leave the country and apply for consular processing. He will be barred from re-entering the US for 10 years unless his wife suffers “extreme hardship.”
Immigration Statuses to Know

- Legal Permanent Residents
- Temporary Protected Status (TPS)
- DACA
- Work VISAs
Green Cards

- Form I-551
- Allows individuals to permanently reside and work in the United States
- Can be issued conditionally (i.e. to a spouse)
Employment-based Immigrant Categories

• First Preference (EB-1)
  • Extraordinary Ability, Outstanding Researcher, Multinational Executive
  • Exempt from Labor Certification Requirements

• Second Preference (EB-2)
  • Nat’l Interest Waiver of the Labor Cert, or Advanced Degree Professionals or Exceptional Ability
  • Labor Cert required for Advanced Degree Professionals, Bachelors plus 5 years experience

• Third Preference (EB-3) (Labor cert required)
  • Skilled Worker (2+ years experience)
  • Professionals: Bachelor’s Degree
  • Unskilled: less than 2 years experience
Employment–based Immigration Procedure

• Employer-sponsored or self-sponsored (if no labor cert. req’d)
• Labor certification or extraordinary/national interest/exceptional
• Multiple petitions
• Multi-step process (Labor Cert → I-140 → I-485)
• I-485 approval = green card
• Non-immigrant status?
• Policy issue: evaluation of permanent residence eligibility at time of hire
Temporary Protected Status (TPS)
Temporary Protected Status

• Certain countries designated by the Secretary of Homeland Security
• TPS beneficiaries not removable from United States
• Individuals must file for TPS during registration period
• Certain individuals not eligible
<table>
<thead>
<tr>
<th>Countries with TPS designations</th>
<th>Estimated number of beneficiaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>El Salvador</td>
<td>212,000</td>
</tr>
<tr>
<td>Honduras</td>
<td>64,000</td>
</tr>
<tr>
<td>Haiti</td>
<td>58,000</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>3,000</td>
</tr>
<tr>
<td>Syria</td>
<td>2,600</td>
</tr>
<tr>
<td>Somalia</td>
<td>400</td>
</tr>
<tr>
<td>Sudan</td>
<td>300</td>
</tr>
<tr>
<td>South Sudan</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>340,310</strong></td>
</tr>
</tbody>
</table>
Deferred Action for Childhood Arrivals (DACA)
DACA

• Requirements to qualify:
  • Under the age of 31 as of June 15, 2012
  • Came to the United States before 16th birthday
  • Have continuously resided in United States from June 15, 2007 until present
  • Were physically present in US on June 15, 2012
  • Had no lawful status on June 15, 2012
  • Are currently in school, have graduated, have a GED, or are an honorably discharged veteran
  • Have not been convicted of a felony, significant misdemeanor, and do not pose a threat to national security
DACA Today

• Current DACA recipients in limbo
• No new DACA applications accepted
• Several lawsuits challenging Trump’s cancellation of DACA (Injunctions allow DACA recipients to continue to file for renewal)
Work VISA Categories

- Permanent VISA
- H-1B
- H-2A
- H-2B
- E visas
- L visas
- O visas
- P visas
- TN visas
H-1B VISAs

Basic requirements
  Job Offer
  Prevailing Wage
  Bachelors or higher degree
  Specialty occupation

Procedure and processing times
  Dual intent
  Quota & Exemptions
  Length of approval
  Extensions
  Spouses and work authorization
Other Non-Immigrant VISA Options

- Visitors for Business or Tourism (B) (includes Visa Waiver Program/ESTA)
- Students (F)
- Professional Workers (H-1B)
- Exchange Visitors (J)
- Extraordinary Ability (O-1)
- Canadian & Mexican Professionals (TN-1)
- Intra-Company Transferees (L-1)
- Treaty Traders and Investors (E-1/E-2)
- Family Members (F-2, J-2, H-4, L-2, O-3, TD)
Other Non-Immigrant VISA Options

• Extraordinary Ability (O-1)
  • National or international renown
  • Employer-sponsored

• Canadian/Mexican Professionals (TN)
  • Profession must be on the NAFTA list

• Intra-Company Transferees (L-1)
  • Oversees subsidiary/affiliate transfers
  • Manager/Executive or Specialized Knowledge

• Treaty Traders/Investors (E-1/E-2)
  • National of treaty country
  • 50% of company owned by treaty nationals
## Employment VISA Comparison

<table>
<thead>
<tr>
<th></th>
<th>H-1B</th>
<th>L-1A / L-1B</th>
<th>TN</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basic requirements</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specific country</td>
<td>No</td>
<td>No</td>
<td>Canada and Mexico</td>
</tr>
<tr>
<td>Job Offer Required</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Prevailing Wage</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Bachelor’s or higher degree</td>
<td>Yes</td>
<td>No (except for L-1 Professional)</td>
<td>Each profession has its specific requirements</td>
</tr>
<tr>
<td>Specialty occupation</td>
<td>Yes</td>
<td>L-1A = Managerial/Executive&lt;br&gt;L-1B = specialized knowledge</td>
<td>NAFTA designated professions</td>
</tr>
<tr>
<td><strong>Procedure and processing</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quota</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Length of approval</td>
<td>6 years (3, 3)</td>
<td>L-1A = 7 years (2, 3, 3)&lt;br&gt;L-1B = 5 years (2, 3)</td>
<td>Renewable indefinitely in 3-year increments</td>
</tr>
<tr>
<td>Work authorization for spouses</td>
<td>No (except when green card is in process)</td>
<td>Yes – must apply for EAD</td>
<td>No</td>
</tr>
<tr>
<td>Dual intent</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
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