

COMMUNITY

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YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & JEFF L. KHURGEL

Green card eligibility despite overstaying or unauthorized employment

A Green Card holder if they are covered by Section 245(i) of the Immigration and Nationality Act (INA). Section 245(i) allows an applicant to obtain permanent residence status if a visa petition or labor certification application was filed for them on or before April 30, 2001. If this visa petition or labor certification was filed after January 14, 1998 and before April 30, 2001 the applicant must have been physically present in the US on December 21, 2000 in order to qualify.

Not everyone is qualified for a green card under Section 245(i). Another possible option is Sec-

tion 245(k) covers EB-3 Professional Workers (those with at least a university bachelor's degree); Skilled Workers (people capable of performing a job requiring at least two years of experience); and Other Workers (people capable of filling positions requiring less than two years training or experience). EB-2 Professionals with Advanced Degrees (people with a degree beyond a bachelor's degree or a bachelor's degree and at least five years of experience in the profession) and Individuals with Exceptional Ability (people who have a degree of expertise significantly above that ordinarily prevalent in the field) may also qualify. Further, Section 245(k) covers EB-1 Priority Workers, EB-4 Religious Workers and the spouses and children of applicants in the categories mentioned above.

There are numerous obstacles to obtaining an employment-based green card. Waivers may or may not be available in all cases. There are potential problems and issues that need to be carefully explored before a person files an application for an employment-based Green Card. As always, we recommend consulting with a knowledgeable and experienced immigration firm.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.
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The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case.

(Advertising Supplement)

INDIVIDUALS in the United States who are not in valid immigration status are often faced with a tough choice - try to get a Green Card and risk alerting immigration authorities as to their presence or stay "under the radar" for the foreseeable future without lawful immigration status.

When deciding whether to proceed with an application for permanent resident status (Green Card), undocumented immigrants must be careful to examine the numerous grounds of inadmissibility. The consequence of being denied will result in deportation proceedings. Among the most common grounds of inadmissibility are overstaying a visa, violating the terms of a visa, unauthorized employment, certain crimes, and lying to obtain an immigration benefit.

Some grounds of inadmissibility may be waived, thus, clearing the road to obtaining a Green Card. Whether a waiver will help in any individual case is fact-specific. Details of the inadmissibility as well as the immigration status and hardship to certain family members of the applicant must be taken into account.

A waiver of inadmissibility for overstaying is not required for individuals who are immediate relatives. Immediate relatives are the parents, minor children or spouses of adult US citizens. These individuals, however, must have entered the US lawfully.

Immigration applicants who are unlawfully present in the US and do not fit into the above mentioned categories may still be able to adjust their status to

"When deciding whether to proceed with an application for permanent resident status (Green Card), undocumented immigrants must be careful to examine the numerous grounds of inadmissibility."

tion 245(k) which only applies to individuals who seek permanent resident status through an employment petition. This provision of the INA will cure several grounds of inadmissibility.

Section 245(k) allows applicants for permanent residency to adjust their status despite overstaying or working without authorization. This exception only applies to applicants who have overstayed or engaged in unauthorized employment less than 180 days. If the violations took place prior to the applicant's most recent lawful entry, that time does not count towards the 180 day limit. The clock stops for overstaying or working without authorization on the day the applicant files for their Green Card.

There are several employment-based categories that Sec-

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