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May B-1/B-2, E-1, E-2, F-1, H-1, J-1, L-1 O-1 visa or TN holder apply for green card?

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Submitted by Chief Editor on Aug 25th 2009

ANSWER:

One of the questions I am asked quite frequently is whether or not an E-1/E-2 visa holder can apply for a green card and not jeopardize his or her E status. The answer is PROBABLY yes he can.

In the E visa context, this is what the govt says:

Quote:

9 FAM 41.51 N15 INTENT TO DEPART UPON TERMINATION OF STATUS
(TL:VISA-404; 04-29-2002)

An applicant for an E visa need not establish intent to proceed to the United States for a specific temporary period of time. Nor does an applicant for an E visa need to have a residence in a foreign country which the applicant does not intend to abandon. The alien may sell his or her residence and move all household effects to the U.S. The alien's expression of an unequivocal intent to return when the E status ends is normally sufficient, in the absence of specific indications of evidence that the alien's intent is to the contrary. If there are such objective indications, inquiry is justified to assess the applicant's true intent. As discussed in 9 FAM 41.54 N4, an applicant might be a beneficiary of an immigrant visa petition filed on his or her behalf. However, the alien might satisfy the consular officer that his and/or her intent is to depart the United States upon termination of status, and not stay in the United States to adjust status or otherwise remain in the United States regardless of legality of status.

So, are they saying they will apply the same standards as given in the note below? I THINK that is what they are saying, but this is not clear.

Quote:

9 FAM 41.54 N4 ISSUE OF TEMPORARINESS OF STAY

(CT:VISA-803; 04-27-2006)

L aliens are specifically excluded from the intending immigrant presumption of section 214(b) of the INA and are, furthermore, not required to have a residence abroad which they have no intention of abandoning. In addition, INA 214(h) provides the fact that an alien has sought permanent residence in the United States does not preclude him or her from obtaining an L nonimmigrant visa (NIV) or otherwise obtaining or maintaining that status. The alien may legitimately come to the United States as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and, at the same time, lawfully seek to become a permanent resident of the United States. Consequently, the consular officer's evaluation of an applicant's eligibility for an L visa shall not focus on the issue of temporariness of stay or immigrant intent.

There exists in law something called the "doctrine of dual intent." This doctrine permits nonimmigrants to have immigrant intent. In other words, even though, you are coming to USA on a visa that is temporary, you may pursue your green card (exhibiting intent to live in USA permanently).

By law, L-1 and H-1 holders are PERMITTED by the doctrine of dual intent to have their green cards pending. This is beyond question. That your green card application is pending can never be a ground for denial of your H or L visa application (includes H-4 and L-2).

As I have noted above, E-1, E-2 visas have an unclear situation. It appears the consulates WILL permit them dual intent, but may not(???). They do NOT have the same level of protection as H and L visas but usually consulates will permit dual intent.

The following visa types have no such protection and their visa or entry into USA can be denied if they have a green card application application in process: B-1, B-2, F-1/F-2, J-1, J-2.

O-1 is allowed to have an immigrant intent (by regulations - though not by statute).

Pursuant to 8 CFR Section 214.2(O)(13)

(13) Effect of approval of a permanent labor certification or filing of a preference petition on O classification. The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an O-1 petition, a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an O-1 nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

TN is also not allowed dual intent, but are often not questioned on their green card pendency.

Nonimmigrant Visas:

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B Visa [3]

E Visa [4]

F Visa [5]

J Visa [6]

K Visa [7]

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General Nonimmigrant Visa [9]

H Visa [2]

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Green Card:

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Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [11] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [12]

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