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# I-140 Immigrant Petition for Alien Worker

## I-140 Immigrant Petition for Alien Worker [1]

Submitted by admin on Mar 26th 2009

### What is an I-140 Petition?

An I-140 petition, or Immigrant Petition for Alien Worker, is filed to petition an alien worker to become a permanent resident in the United States. The employer must file an I-140 Petition on your behalf within 180 days from the date your Labor Certification is approved by the U. S. Department of Labor. An I-140 Petition may be filed without a Labor Certification where the beneficiary qualifies under EB-1 classification.

### Who is an I-140 Petition Filed for and What are the Classifications?

On the I-140 Petition you will be asked to indicate the petition type. Please note, an I-140 may be filed on behalf of beneficiaries classified as follows:

- An alien of extraordinary ability (EB-1(A) Category)
- An outstanding professor or researcher (EB-1(B) Category)
- A multinational executive or manager (EB-1(C) Category)
- A member of the professions holding an advanced degree or an alien of exceptional ability (EB-2)
- A skilled worker (EB-3(A)(i))
- A professional (EB-3(A)(ii))
- Other workers (EB-3(A)(iii))

Please see our links on EB-1, EB-2, and EB-3 for more details.

### What Materials Should Accompany Your I-140 Petition?

- Completed Form I-140;
- A copy of your approved Labor Certification;
- Filing fee of \$580 by check or money order made payable to the Department of Homeland Security;

- Proof of the petitioner's financial position to pay the beneficiary's wages;
- Experience letters from the beneficiary's previous employers.
- Other documents such as degree certificates, education evaluations, and qualification letters may be required.
- In the I-140 petition, the employer must identify whether the beneficiary will apply for consular processing at an American consulate abroad for an immigrant visa or apply for adjustment of status to become a permanent resident within the United States.

## Note on Ability to Pay Wages Issues

As part of the I-140 Petition, your employer must demonstrate it has the ability to pay the proffered wages specified in the Labor Certification from the time the Priority Date was established and continues to have this financial ability. As per the May 4, 2004 *Memorandum from William R. Yates on the issue of "Determination of Ability to Pay under 8 CFR Sec. 204.5(g)(2)"*, USCIS adjudicators should make a positive ability to pay determination in any one of the following circumstances where the record contains credible evidence that either the net income, net current assets, or wages paid are equal to or greater than the proffered wages. For this purpose, the employer's audited financial statements, corporate income tax return documents, and W-2 wages paid to the beneficiary should be submitted. \*\*Please note in recent months, USCIS has inquired with many petitioners regarding ability to pay not only an individual beneficiary, but the sum total of the proffered wages of all beneficiaries that the petitioner has filed immigrant petitions for.

## Can you file I-140 and I-485 Concurrently?

If your priority date is current when filing your I-140, you are eligible to file your I-485 (Adjustment of Status) Petition concurrently. This includes I-485 Petitions for spouses and applicable children. To check if your priority date is current, please check the most recent [visa bulletin](#) [2].

If you are filing your I-140 and I-485 concurrently, applications for Employment Authorization (EAD) and Advance Parole may also be filed at this time.

Please see our section on [I-485 Petitions](#) [3] for further information.

## What Happens After I Submit My I-140 Petition?

After USCIS obtains your I-140 Petition, a Receipt Notice is issued and a Receipt Number is assigned to your case. The processing time taken by USCIS to approve or reject the I-140 depends on whether a Request for Evidence (RFE) is issued, duplicate Requests for Evidence are issued, or a Notice of Intent to Deny is issued. Furthermore, processing times can vary greatly given that particular Service Centers may have longer backlogs. For general processing times please see the [link](#) [4]. If your case is approved, then an Approval Notice will be issued. Please note, approval of an I-140 does not confer any status or authorized period of stay permission. Your status will remain the same as prior to approval of your I-140 petition.

## Am I Eligible for I-140 Premium Processing?

Filing I-140 with Premium Processing:

Currently, USCIS is accepting premium processing requests for the following I-140 categories:

- 1) Aliens of extraordinary ability
- 2) Outstanding professors and researchers
- 3) Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver
- 4) Skilled workers
- 5) Professionals
- 6) Workers other than skilled workers and professionals

To request premium processing on an I-140, file Form I-907 and filing fee with the original Form I-140 petition to the appropriate USCIS Service Center. To upgrade an I-140 from regular processing to premium process, file Form I-907 and the filing fee along with a copy of the I-140 Receipt Notice to the Service Center where the I-140 petition is pending. Upon receiving Form I-907, the USCIS will either adjudicate the petition or issue a Request for Evidence within 15 days.

USCIS will not accept Form I-907 for premium processing on an I-140 petition if the I-140 petition is:

- 1) A second filing of a Form I-140 petition while an initial Form I-140 remains pending;
- 2) Duplicate Labor Certification requests (i.e., cases filed without an original labor certification from the Department of Labor), and;
- 3) A Form I-140 petition in which a final decision has been made.

## **What if My I-140 is Rejected?**

Within thirty days of denial (thirty three days if the denial is received by postal mail) you may file an Appeal or a Motion to Reopen your I-140 Petition. An immediate consultation with your immigration attorney is a must at this point to gauge the reasons for the unfavorable adjudication and to assist you in deciding whether or not to proceed with a Motion to Reopen or an Appeal. Please note if your I-140 Petition is denied, and you have a pending I-485(s), yours as well as your derivative beneficiary's I-485(s) will be denied immediately.

## **What About My Dependents?**

Spouses and children (under 21 at the time of I-140 approval) are entitled to permanent residence through your employment-based application. They are eligible for adjustment of status or consular processing.

## **Priority Date Carry-Over from a Previously Approved I-140**

If a person has received an I-140 approval through an employer, the priority date then permanently belongs to him or her UNLESS the I-140 is revoked by the USCIS for misrepresentation.

If such a person changes employers and the approved I-140 is not revoked, the priority date will remain the old one, even though he or she have to process the labor certification and I-140 again with the new employer. It does not matter where in USA the new job is located, what the new job title is, or whether the new job falls under EB-2 or EB-3. The priority date is still transferrable.

**Green Card:**

## Form I-140 <sup>[5]</sup>

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**Source URL (retrieved on 19 Feb 2020 - 10:55):** <https://immigration.com/greencard/form-i-140/i-140-immigrant-petition-alien-worker?page=2>

### **Links:**

- [1] <https://immigration.com/greencard/form-i-140/i-140-immigrant-petition-alien-worker>
- [2] <http://www.immigration.com/visa-bulletin>
- [3] <http://www.immigration.com/greencard/380/i-485-ead-ap-fp>
- [4] <http://www.immigration.com/node/1412>
- [5] <https://immigration.com/greencard/green-card/form-i-140>