



Memorandum

TO: Himanshu Malik
FROM: Khari Little
DATE: March 3, 2022
RE: Overview of Permanent Residence Processing

The purpose of this Memorandum is to provide an overview of the procedures necessary to obtain the permanent (immigrant) visa (also called a “green-card”) for Himanshu Malik on the basis of his full-time employment with Deloitte & Touche LLP (“Deloitte & Touche”) as Advisory Senior Consultant.

GENERAL OVERVIEW

There are three basic steps in obtaining permanent resident status:

1. Obtaining certification from the Department of Labor (“DOL”) that the employment of Mr. Malik will not adversely affect U.S. workers (the “PERM labor certification” process), or obtaining an exemption from the PERM labor certification process on the basis of prior managerial employment with a foreign affiliate of Deloitte & Touche.
2. Obtaining U.S. Citizenship and Immigration Service (“USCIS”) approval of an I-140 Immigrant Petition for Alien Worker (the “preference petition”).
3. Applying for and receiving the actual immigrant visa through either I-485 Adjustment of Status processing in the United States or through consular processing of the immigrant visa at a U.S. Embassy or Consulate overseas.

PERM LABOR CERTIFICATION PROCESS

General

Permanent residency based on the offer of a full time job will not be considered until Deloitte & Touche has first tried to find available, qualified U.S. workers to fill the position through a process called PERM labor certification. Please review and refer to the previously provided Memorandum entitled “PERM Labor Certification Procedures” for complete information about the PERM labor certification process.

Experience with Same Employer

Note in particular that Mr. Malik must meet every minimum job requirement (as indicated on the GCSD) without counting any experience gained while working with Deloitte & Touche in the position Advisory Senior Consultant (on the theory that, if Deloitte & Touche is willing to provide training to a foreign national, then it should provide training to any otherwise qualified U.S. worker). In Mr. Malik's case, we will take the position that we are in fact permitted to count his experience working with Deloitte & Touche in the junior position Advisory Consultant, on the grounds that the junior position, Advisory Consultant, is not "substantially comparable" to the position Advisory Senior Consultant. Under applicable PERM guidelines, the phrase "substantially comparable" means that the two positions share at least 50 percent of the core job duties. We will provide a letter from Deloitte & Touche confirming same. Mr. Malik will also need to obtain letter(s) from his former (non-Deloitte & Touche) employer(s) attesting to his employment experience prior to joining Deloitte & Touche.

I-140 PREFERENCE PETITION FILING

The second step in permanent residence processing is to file an I-140 preference petition with USCIS. The purpose of the preference petition is to establish that the job offer qualifies as a basis for the immigrant visa and that Mr. Malik meets the minimum requirements to perform the job duties as set forth in the offer. The employment category for which Mr. Malik appears to be eligible is that set forth in Section 203(b)(3)(ii) (Professional) of the Immigration Act of 1990 -- the EB-3 category available to persons whose positions require at least a bachelor's degree or two years of training or prior experience. Inasmuch as the position Advisory Senior Consultant requires a Bachelor's degree (or higher) in Computer Science, Information Systems, Engineering, Finance, Accounting, Business Administration, Business Analytics, or related field (willing to accept foreign education equivalent) plus eighteen months of internal controls and accounting experience and Mr. Malik satisfies the requirements, he will qualify for the EB-3 preference category.

Current regulations require that the second stage of the green card process be filed within 180 days following approval of the PERM application.

We will need approximately ten (10) months for processing and approval of the PERM application (lead time required to finalize case strategy, time required to conduct recruitment and assess results, and an approximate six (6) month processing time). Thus, the estimated date by which the preference petition will be filed is January 2023, unless the PERM application is selected for audit, in which case there will be an additional approximate 10-12 month delay prior to filing the preference petition.

TIMING ISSUES

Green Card Processing

We cannot file the third and final stage of the green card process until immigrant visa numbers are available to persons in Mr. Malik's preference category. Immigrant visa

availability is determined on a monthly basis by the Department of State. Immigrant visa numbers are not currently available for persons in Mr. Malik's category.

Bifurcated Visa Bulletin

The Visa Bulletin system has two charts: the “Dates for Filing Applications” and the “Application Final Action Dates.” Each of these charts has its own set of priority dates.

The “Dates for Filing Applications” indicates the date when the Application for Adjustment of Status may be filed with USCIS, while the “Application Final Action Dates” determines when USCIS may adjudicate the Adjustment of Status application. In other words, you cannot obtain approval of your permanent residence application until your priority date reaches the “Application Final Action Date” in the Visa Bulletin.

USCIS announces on a monthly basis which chart will determine whether the Adjustment of Status application may be filed for that month.

Underlying NIV Status

One important point to recall in applying for permanent resident status is that Mr. Malik needs to maintain valid nonimmigrant visa status during the pendency of permanent visa processing; the mere filing of permanent residency papers does not permit him to remain in the United States absent an independent, valid nonimmigrant visa (until such time as we are eligible to file the Adjustment Application). For this reason, it is desirable to initiate permanent visa processing at a point in time during which Mr. Malik still has sufficient time remaining in nonimmigrant visa status.

Under current law, the maximum permissible period of stay in the United States in the H-1B visa category that applies to Mr. Malik is six years (including any time that he may have spent in H or L visa status for employers other than Deloitte & Touche). Our records indicate that Mr. Malik has until October 5, 2027 to remain in H-1B visa status (by which time he must either (i) have filed the Adjustment of Status Application; (ii) have obtained green card status through consular processing; (iii) have a labor certification application that has been filed on or before October 5, 2026 (one year in advance of the October 5, 2027 H-1B expiration date); or (iv) have an approved preference petition as of the October 5, 2027 H-1B expiration date).

In the case of (iii) above, if the PERM labor certification application is filed for Mr. Malik on or before October 5, 2026, he will be eligible to extend his H-1B visa status in annual (1-year) increments beyond his current October 5, 2027 H-1B ultimate expiration date until such time as his green card status is finalized. [Note that once the above referenced I-140 preference petition has been approved, and if visa numbers are still unavailable to Mr. Malik, he will be eligible to extend his H-1B visa status in 3-year increments until such time as visa numbers become available to him, irrespective of whether or not his PERM application was filed on or before October 5, 2026.]

ADJUSTMENT OF STATUS/CONSULAR PROCESSING

General

The third and final step in obtaining permanent resident status is to actually apply for permanent residence. There are two ways to take this final step: (1) the filing of an Adjustment of Status Application in the United States OR (2) processing of the immigrant visa through the U.S. consulate in Mr. Malik's foreign country of last residence, a process referred to as "Consular Processing." In either event, a green card visa number must be available for persons in Mr. Malik's employment category in order to take either the Adjustment of Status or Consular Processing steps.

Differences Between Adjustment of Status Processing and Consular Processing

Mr. Malik, we understand that you wish to pursue Adjustment of Status for the third and final step in the green card process. We will contact you via separate e-mail as your filing eligibility date approaches to advise you regarding the steps you will need to take in connection with the Adjustment of Status. The balance of this e-mail provides an overview of both the Adjustment of Status and Consular processes.

Overview of Adjustment of Status

The current processing time for the Adjustment of Status Applications with USCIS is approximately 12 months. Once visa numbers are available to you, and after approval of your PERM application, you will be permitted to file an Adjustment of Status Application with USCIS. International travel during the processing of the Adjustment Application is possible so long as you also have a valid nonimmigrant H-1B visa with which to reenter the United States

As a part of the Adjustment Application, we will also apply for an international travel document (called "Advance Parole"); the 12-month, multiple entry Advance Parole travel document may take up to four months to process, but once it is issued you will no longer need a nonimmigrant visa in order to reenter the United States after international travel. We also will include a request for an Employment Authorization Document ("EAD") that, once issued, will authorize employment in the United States for you. The Advance Parole and the EAD provide travel and work authorization that are independent of the underlying nonimmigrant visa.

Even if you elect Adjustment of Status processing, we advise that your current H-1B nonimmigrant visa status be maintained -- and extended as necessary -- to provide you with a fall-back status in the event that the Adjustment application is denied.

Overview of Consular Processing

There are several steps involved in completing consular processing. These steps do not commence until the preference petition has been approved and visa numbers are available to you. Once the petition is approved, the following communication with the National Visa Center ("NVC") and with the U.S. Consulate in New Delhi, India occurs:

We will receive a bar-coded Immigrant Processing Fee bill from the NVC, usually within 60 days following the approval of the preference petition, and we arrange for payment of the bill as soon as we receive it.

Approximately one month after payment has been received by the NVC, the NVC will send us the so-called Packet 3.

Mr. Malik will need to collect the following required original documentation -- as applicable to you -- birth certificates; any deportation papers; court/prison records; military records; marriage certificates; divorce certificates; and any related translations of those documents if they are not in English. Further, you will be required to obtain a police certificate from each country in which you have lived for more than six months since you reached the age of sixteen. The process of obtaining the police certificates can be a lengthy one. Note that you are not required to obtain a police record for the United States. Since police certificates are generally only valid for six months, we recommend that you do not begin the process of obtaining the required police certificates at this time; we will notify you when it is appropriate to begin gathering the certificates.

Once that process is complete, we will receive notification of the interview date along with detailed instructions for obtaining the necessary medical examinations, at which time you will need to make arrangements to travel to New Delhi, India to complete the medical examinations and appear for your scheduled interview.

It should be noted that consular processing does not affect the ability to travel to and from the United States so long as there is a valid temporary visa to use to enter the United States. Consular processing takes approximately 9-12 months (depending on the workload of the particular consular post). Unfortunately, there often is little advance notice of the personal interview date.

Adjustment of Status Offers Significant Benefits

There are several very important benefits available with the Adjustment of Status option that are not available under consular processing. The first benefit is the so-called "adjustment portability." Current law allows an individual who has filed for Adjustment of Status and whose Adjustment of Status application has been pending for 180 days or more to change jobs if the new job is in the same or similar occupational classification as was reflected in the preference petition underlying PERM labor certification. A second benefit is the right to file an appeal should USCIS deny the Adjustment of Status application. Applications filed via consular processing are not appealable. Thus, should the consular officer deny the application, there is no right to appeal the process. Thirdly, the I-485 applicant may obtain the EAD and AP benefits as described above. Finally, an I-485 applicant may benefit from certain provisions of the Child Status Protection Act, which protects dependent children nearing the age of 21. We generally advise our clients to pursue the Adjustment of Status option because it does preserve the important benefits discussed above.

GREEN CARD FOR SPOUSE

During the final step in green card processing, Mr. Malik's spouse (and any unmarried children who are deemed to be under 21 years of age based on USCIS rules that apply¹) will be eligible to obtain green card status as well. We will provide additional information on obtaining the green card status for Mr. Malik's family after approval of the Labor Certification Application.

¹ USCIS rules calculate the age of the child for purposes of determining whether the child is under 21 as follows: Actual age of the child on the date that both (i) the preference petition (Form I-140) is approved AND (ii) a visa number is available, LESS the number of months during which the preference petition was pending with USCIS, ASSUMING that within one year from date of approval of the preference petition steps were taken to apply for green card status (via the filing of an adjustment of status application with USCIS or via consular processing).