

America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

May 2010

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Immigration through employment: where do we stand?

Every day I receive inquiries and can read questions on various immigration fora asking the same: "How can I obtain a green card through employment? Where can I find an employer who will sponsor me?"

The answer found in the law and in the books sounds easy enough: Find an American employer, survive the labor certification process, have a I-140 petition and an application for an immigration visa approved or adjust status and after a successful interview with an USCIS officer you will have your coveted Green Card.

A few years ago this advice might even have been sufficient. I remember that the bars and restaurants in New York City, where I lived, were full of happy Germans, French, Brits and many other foreigners telling stories of how they were almost begged by American employers to sign up and come and work for them. Today some things have changed.

I talked to a colleague on the phone this week and asked her how business was shaping up. She said: "Lousy. Business immigration is down to almost zero." In fact, she said that a company client of hers who had filed 200 employment based visa applications last year, this year had filed two. "Nobody is hiring."

Are things really that bad? What about all those hopefuls who post on XING or other fora that they are looking for a job in the U.S.?

The job market is very tight. But that is not the whole picture!

American employers have cut back hiring, in fact, they have been laying off employees for the last 12-18 months. In some areas it has been a dramatic reduction in the work force. And those who managed to hang on to their employees very often do not plan to hire any more in the foreseeable future. That is one message an observer of the American job market at this point will perceive. However, for foreigners seeking a job and a visa this is not the whole story.

In 2009 the number of employment based Green Cards was down only 13% compared to 2008 and even less compared to 2007. A 13% decline does not really signal a hiring freeze. Something else must be going on.

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The overall number of employment based Green Cards gives a much better idea about how difficult it really is to find a qualifying job which leads to legal permanent residence: Of the 1.1 million Green Cards that were issued in 2009 according to DHS statistics, only 144,000 were issued on a basis of an employment petition, that is only 12% of all Green Cards. The vast majority of Green Cards were issued to family based applicants.

Within that category the numbers were almost evenly distributed: about 40,000 each went to “priority workers”, “professionals with advanced degrees” and to “skilled workers etc.” Investors obtained a little more than 3,000 Green Cards (they are being counted in the employment category as well.)

“Priority workers” are executives and managers of multinational companies who are sent to the United States to manage the foreign company’s business in the country. They use up one third of all employment based Green Cards. That means only 80,000 Green Cards were left for all those who are not already employed as an executive or manager, but who have to apply for a job with an American or foreign employer.

More than half of the Green Cards issued actually went to the spouses and children of the employees. To figure out the number of actual job offers that led to a Green Card one therefore must cut the number of Green Cards in half. In other words, only about 40,000 actual employees of the second and third category together received a Green Card.

Of these, less than 2,000 were given to applicants who did not already live in the U.S. with a non-immigrant visa.

The message these numbers send is bleak but clear: Applying for a job from abroad, without being already in the country on another visa, and actually receiving a Green Card is like winning a lottery. The “Green Card Lottery” actually offered a better chance: it yielded more than 20,000 original visa. Less than 2,000 employees got an employment based Green Card.

But let us give the numbers a positive spin: If you are in the United States, working on an H-1b or E visa or graduating with an advanced degree from a F-1 visa school, your chance of obtaining a Green Card has almost remained the same, compared to the years before 2009.

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OK, I am no executive, and I don't have a Master's. What gives?

Before we can take a look at the "bright side of life" we have to swallow one more toad. The numbers send another gloomy message for those interested in a Green Card based on the "third category," that is for "professionals without an advanced degree", for "skilled workers" and for "unskilled workers": The backlog in this category has not significantly moved since it was introduced last year. If you today file an application for such a green card, you will probably have to wait seven years until you will receive it.

If an employer today submits to the very expensive and time-consuming labor certification process for a prospective employee who does not have an advanced degree, or is of extraordinary abilities, or an executive sent from the mother company abroad, the employer will have to wait seven years until the employee can start working.

Stepping into the shoes of an employer, I cannot imagine anyone who today wants to predict the necessity of a new hire in seven years. Therefore I assume that few employers will support such a green card application for someone who is not already working for him or her based on another visa. Even those, who are here on H-1b, E-1/2 special skills visa, or similar visa might experience difficulties keeping legal status until their Green Card finally will be issued.

In other words: Even those employers who actually would like to hire someone right now cannot do so but have to wait 7 years for that employee: an almost impossible proposition for most employers.

So, what should an employer or a prospective employee do?

What should I do?

Most employment visa, Green Cards or H-1b etc., go to employees of just a handful big companies in the U.S. I lately spoke with a manager of an internationally known computer technology manufacturer and he assured me: "We are still hiring. We still take our full quota of H-1b workers and we have no plans to reduce that. And if we find highly qualified workers who we need, we still apply for Green Cards for them."

Therefore, until the situation substantially changes, by political measures or by a sudden decline of the backlog, if you are an employer and want to permanently fill positions with well qualified foreigners who do not have advanced degrees: take

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advantage of the H-1b or E visa. And once you hired them based on such a visa, make up your mind quickly if you want to keep them: in that case apply for a Green Card as soon as possible because it will take quite a while.

If they have an advanced degree or extraordinary abilities, nothing has changed at all: you will be able to employ them within a few months.

For prospective employees the message is equally clear: If you want to have a chance to work and stay in the U.S. for good, you have to take the risky detour of first applying for a temporary visa such as H-1b or E. If you have the opportunity, try to obtain an advanced degree (Master's or better.) If you don't have a bachelor's degree, get one (or an equivalent). You cannot get a H1-b visa without it. Get work experience.

If you are young and really want to get a foot into the American job market: consider spending some time in the U.S. before you actually work here: study here, become a trainee, take part in an exchange program, do anything you can do to get contacts that might lead to an offer of a temporary job. Take that temporary job and continue to network. This will most likely be the only way to get a Green Card.

One last word about E-visa.

Those are visa issued upon the basis of a bilateral treaty between the U.S. and a number of other countries, many of them in Europe. Companies which are owned by foreign traders or investors can hire foreign employees based on an E-visa if those employees have special skills which are needed to run the business or if they are to manage the American based business. For many employees from these countries an E-visa is a welcome alternative to a Green Card as a stepping stone into the American market.

(All numbers are rounded and taken from the official DHS statistics for Fiscal Year 2009 and 2008).