

Can a Canadian Citizen Work in the U.S. under a TN Visa and File for Lawful Permanent Residence? Part I.

The simple answer to this question is yes, you may apply for a green card while working in the U.S. under a NAFTA TN visa. However, there are different strategies for doing so and that is why you should consult with an experienced immigration attorney in determining your best course of action.

The biggest issue for a TN visa holder applying for permanent residency (green card) is that you must maintain bona fide nonimmigrant intent. In layman's terms, you cannot intend to establish permanent residence in the U.S. and must prove that your proposed stay is temporary and that you will leave at the conclusion of your TN employment.

You may be asking yourself how does show a bona fide nonimmigrant intent if you are applying for permanent residency while in the U.S. under a TN visa? The reason you can do both is that the law does not prohibit you from having the intent to immigrate in the future. "An intent to immigrate in the future which is in no way connected to the proposed immediate trip need not in itself result in a finding that the immediate trip is not temporary. 9 FAM § 41.59 N5.

The process for applying for permanent residency while holding a TN visa can take several years. First, you will have to complete and submit your permanent labor certification (PERM). Second, you will have to file a petition for immigrant worker. Third, you will have the option of filing an application to adjust status in the U.S., or in the alternative you will have to obtain a visa at a U.S. consulate abroad. I will discuss in greater detail the better option below.

Even after the first two stages have been completed, your application is often halted until your visa number becomes available. The Immigration and Nationality Act (INA) imposes annual numerical limits (quotas) on the number of foreign nationals who may receive a green card. Due to that fact that it could take several years for your green card to become available, you will not have any issues with having "nonimmigrant intent" with regards to the first two stages because your green card application will fall outside of the one year of residency allowed under the TN visa.

However, once your PERM and petition have been filed and you have become eligible to receive a green card, you may face some issues regarding nonimmigrant intent. Since you are able to obtain a green card within the one year period authorized by the TN visa, an immigration official may allege immigrant intent.

Therefore, we often recommend that you try to obtain your green card abroad through consular processing. The reason for this recommendation it will be easier to prove nonimmigrant intent since your stay at the U.S. would only be temporary, evidenced by the fact that you left the U.S. for your interview at the U.S. consulate abroad. Furthermore, this strategy will also ensure

continued work authorization under the TN visa status and will also permit travel while the green card application is processing.

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