



Navigating the Green Card Journey: Challenges and Recent Changes for Non-Dual Intent Statuses

Obtaining a green card while in non-dual intent statuses such as J-1, F-1, or H-2B can be a daunting and challenging journey. These visa categories are designed for individuals with specific, non-immigrant intent, making the transition to permanent residency complex. One significant hurdle is the requirement to prove non-immigrant intent during the initial visa application process, which involves demonstrating strong ties to one's home country. One cannot obtain a non-immigrant visa if one has immigrant intent at the time of applying for the visa; however, intent can change, and it can be possible for such a person to apply for a green card after they have entered the US.

Recent changes to State Department guidance bring a glimmer of hope to international students in the US who aspire to obtain green cards.

F-1 students must still have a residence in a foreign country they have no intention of abandoning.

However, the new State Department guidance adds the following instructions for consular officers processing F1 visa applications:

Adjudicating student-visa applications differs from those of other short-term visitors in that the residence-abroad requirement should be looked at differently. Typically, students lack the strong economic and social ties of more established visa applicants, and they plan longer stays in the United States. The statute assumes that the natural circumstances of being a student do not disqualify the applicant from qualifying for a student visa. You should consider the applicant's present intent, not what they might do after a lengthy stay in the United States.

If a student visa applicant is residing with parents or guardians, you may consider them to be maintaining a residence abroad if you are satisfied that the applicant has the present intent to depart the United States at the conclusion of their studies. The fact that this intention may change is not sufficient reason to deny a visa. In addition, the present intent to depart does not imply the need to return to the country from which they hold a passport. It means only that they must intend to leave the United States upon completion of their studies. Given that most student visa applicants are young, they are not expected to have a long-range plan and may not be able to fully explain their plans at the conclusion of their studies. You must be satisfied at the time of the application for the visa that the applicant possesses the present intent to depart at the conclusion of their approved activities.

By allowing F-1 students more flexibility in pursuing dual intent, the changes could alleviate some of the challenges associated with obtaining green cards for this demographic. However, despite these positive developments, the broader landscape of green card acquisition for individuals in non-dual intent statuses remains complex and multifaceted.

While the recent changes to F-1 status offer promising prospects for this particular group, the journey towards obtaining a green card for individuals in non-dual intent statuses still requires careful navigation. It's essential for those in such visa categories to stay informed about policy changes and to seek expert guidance from a qualified immigration lawyer to maximize their chances of success. Additionally, comprehensive reforms addressing the challenges faced by those in non-dual intent statuses could lead to an immigration system that better serves the needs of all stakeholders.