

# FAQ: H-1B to PERM (Green Card)

## When would we need to start the Green Card Process for our H-1B Employee?

We wish the answer was simple. But, of course, it is not.

The answer is complex and based on various factors including:

- time remaining on the current H-1B and the ability to extend the H-1B visa beyond six years to keep the worker employed;
- costs and HR energy associated with the process;
- business needs and using the green card sponsorship as recruitment and/or retention of top talent;
- discretionary government adjudications and processing times; and more.

The process is also lengthy, bureaucratic, and irregular but it is key to keep a valuable foreign worker's employment authorized and often working for the employer as a retention tool.

## Short Answer and the Why

The latest an employer should consider starting the employment-based Green Card for employees in H-1B status is on or about **2.5 years** (about 30 months) before the H-1B six-year limit. In other words, we recommend starting the process at the latest 3.5 years into the maximum six-year H-1B validity.

Why? Because H-1B extensions beyond six years are possible *only* if the employment-based green card process has started and reached a certain stage in the process, and it takes roughly 2.5 years to reach that stage.

## H-1B Extensions beyond six years - 3 years and 1 year

H-1B extensions for 3 years beyond the max sixth year are permitted if the PERM is certified and the I-140 is approved, and the H-1B extension is timely filed. This can be done in three-year increments until the foreign national's green card is approved. This is the best case scenario as it avoids the costs and energy of only a 1-year H-1B extension.

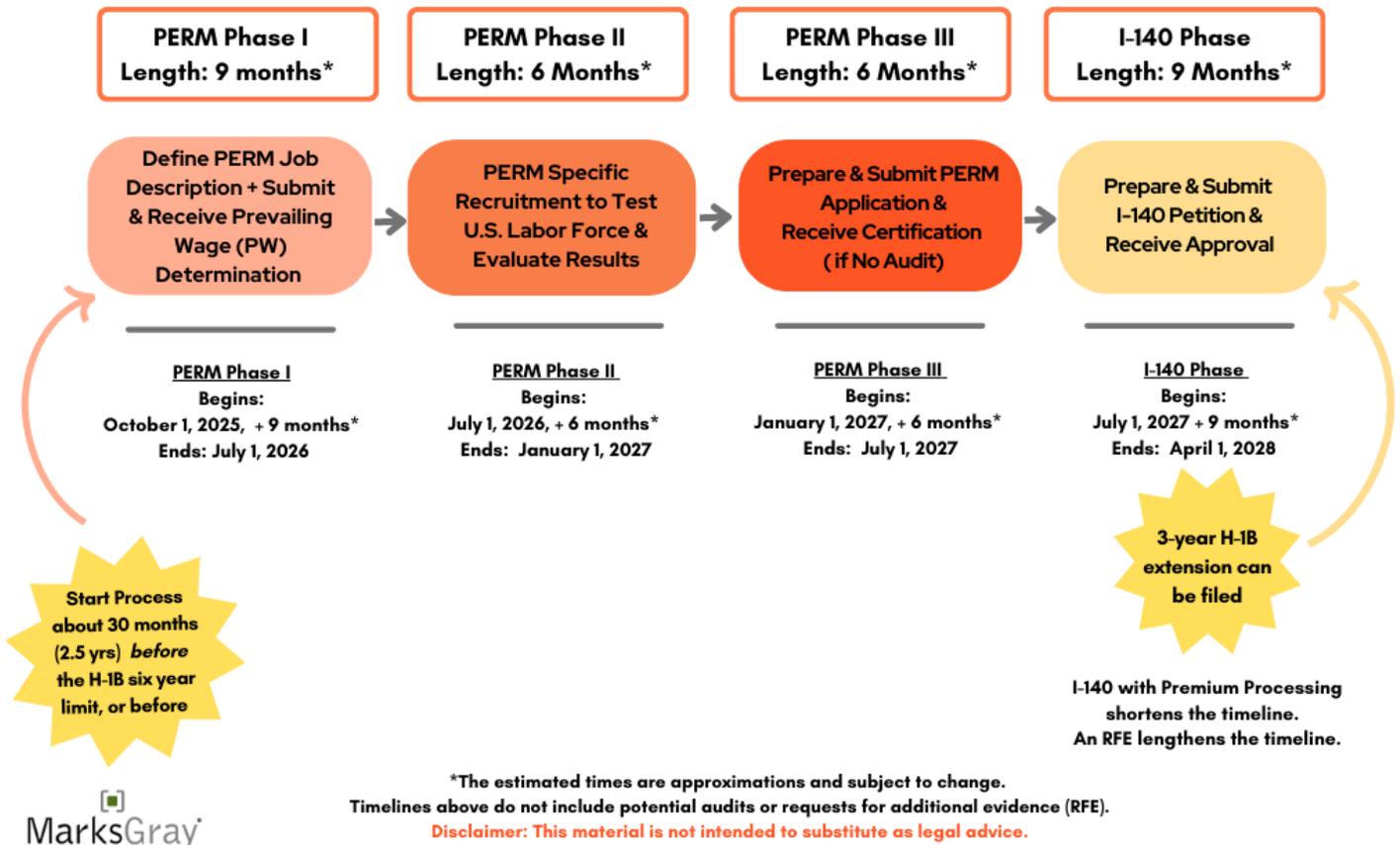
H-1B extensions for 1-year increments beyond the sixth year are also available if the PERM Labor Certification or I-140 is pending or approved, AND the Labor Certification or I-140 was filed at least 365 days before the end of the sixth year or the requested H-1B start date. The process and facts supporting the request for obtaining the one-year H-1B extension beyond six years are more complex and should be avoided with proactive planning.

**\*This material is not intended to substitute as legal advice.**  
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Below is an example with an *estimated* timeline:

## H-1B to PERM Timeline Sample (for H-1B extensions beyond six years)



**Note:** If a candidate on H-1B status is being considered for hire, it is important to evaluate whether they have a certified PERM or I-140 approved with a prior employer. The new employer will need to start a new PERM process. However, the Priority Date is transferable and the ability to extend the H-1B beyond six years also remain.

If you require additional information and/or specific case analysis please reach out to us. We look forward to assisting you in this process to help you gain time and peace of mind.

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