

S. 744 Title II—Immigrant Visas Subtitle B—Agricultural Worker Program

SEC. 2211-2215 BLUE CARD STATUS

What is Blue Card Status? Terms and conditions of Blue Card Status:

- *Legal Authorization to work:* people with Blue Card Status will be “authorized to be employed in the US while in such status”.
- *Travel outside US:* people with Blue Card Status may travel outside the US and may be allowed to reenter without obtaining a visa. (Must have documentation of Blue Card Status or a travel document and absence from the United States may not exceed 180 days)

What kind of status is Blue Card Status?

- A person with Blue Card Status is to be considered “lawfully admitted to the US” and may NOT be classified as a NONIMMIGRANT or as an alien “Lawfully admitted FOR PERMANENT RESIDENCE (e.g. LPR).

Can Blue Card Status be revoked?

Blue Card Status may be revoked at ANY TIME after providing notice, and after exhaustion or waiver of all applicable administrative review procedures if the person:

- No longer meets the eligibility requirements
- Knowingly used documentation for an unlawful or fraudulent purpose
- Is absent from the US for any single period longer than 180 days or was absent for more than an aggregate 180 days during any calendar year

Is a person with Blue Card Status eligible for public benefits?

- A person with Blue Card Status is not eligible for any Federal means-tested public benefit

What other ineligibilities are there for Blue Card Status holders?

Blue Card Status holders are to be considered lawfully present in the US for all purposes while in status, EXCEPT:

- A person with Blue Card Status is not entitled to the “premium assistance tax credit” authorized by the IRS for his/her coverage
- A person with Blue Card Status will be subject to the rules applicable to individuals NOT lawfully present under the “Patient Protection and Affordable Care Act”
- A person with Blue Card Status will be subject to the rules applicable to individuals not lawfully present under certain sections of the IRS code.

What are the eligibility requirements – How does Blue Card Status work?

- Previous agricultural employment in the US: not fewer than 575 hours or 100 work days during the 2-year period ending on December 31, 2012
- A spouse and/or child of an agricultural worker who has been physically present in the US and has maintained continuous presence since on or before December 31, 2012 may apply for Blue Card Status as a dependent

Application Procedure:

- Must abide by the 1 year deadline to submit an application (time starts when final rules of the bill are made public).

- Submit Blue Card Status application
- Submit biometric, biographic and other data necessary to conduct national security and law enforcement clearances and screenings
- Pay all applicable processing fees including application fees, biometrics fees; for national security, criminal background and fraud checks as well as fees to cover the administration of collecting such fees.
- The applicant must be represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals.

Grounds for ineligibility: Convictions of offenses:

Conviction defined: Conviction does not include a judgment that has been expunged, set aside, or the equivalent.

- Conviction for an offense classified as a felony (in your jurisdiction)
- Aggravated felony as defined by Congress
- 3 or more misdemeanor offenses
- Unlawful voting
- Other international law offenses

While waiting for approval or denial of Blue Card application, what happens?

- Applicants may receive “advance parole” to be able to leave and reenter the US under humanitarian circumstances only;
- May not be detained or removed from the US, UNLESS the person IS, OR HAS BECOME, INELIGIBLE for Blue Card Status;
- Applicants are not to be considered unlawfully present or unauthorized alien during this time

What happens if someone is apprehended or in removal proceedings before having applied for Blue Card Status?

- If a person is apprehended during the period beginning on the date of the enactment of this Act and ending of the application period appears prima facie eligible for blue card status, he or she will be provided with a reasonable opportunity to file an application under this section during such application period; and may not be removed until a final administrative determination is made on the application.

Can someone who has been deported or removed be eligible for Blue Card Status?

Eligibility after Departure (for deportees) - although there are some waivers available for deportees to apply for RPI status, it is unclear whether similar waivers would be available to someone applying for Blue Card Status. These provisions do not appear to apply to applicants for Blue Card Status.

What if an applicant cannot supply the requested documentation?

- Application can be denied based on insufficient evidence or not following through with requests/procedures.
- If an application is denied, an amended application may be filed if it is within the application period and if it contains all the required information and fees that were missing from the initial application.

S. 744 Title II—Immigrant Visas Subtitle B—Agricultural Worker Program SEC. 2211-2215 BLUE CARD STATUS

How long does Blue Card Status last?

- No one may remain in Blue Card Status for more than 8 years after the date that regulations are published under this section.
- The earliest that a Blue Card Status holder would be able to apply for LPR would be 5 years after the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

How can status be adjusted to Legal Permanent Resident (LPR)?

The following requirements must be satisfied:

- **QUALIFYING EMPLOYMENT**—the applicant, during the 8-year period beginning on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, must have performed not less than 100 work days of agricultural employment during 5 of the 8 years; or during the 5-year period beginning on such date of enactment, performed not less than 150 work days of agricultural employment during 3 of the 5 years.
- **EXTRAORDINARY CIRCUMSTANCES**— In determining whether an applicant has met the requirements, s/he may be credited with not more than 12 additional months of agricultural employment in the United States to meet such requirement if s/he was unable to work in agricultural employment due to— pregnancy, disabling injury, or disease that can be established through medical records; illness, disease, or other special needs of a child that can be established through medical records; severe weather conditions that prevented engagement in agricultural employment for a significant period of time; or termination from agricultural employment, if the Secretary determines that—the termination was without just cause; and the applicant was unable to find alternative agricultural employment after a reasonable job search.
 - **APPLICATION PERIOD**—The application for adjustment of status is submitted before the expiration of Blue Card Status.
 - **FINE**—The applicant must pay a fine of \$400
 - **PAYMENT OF TAXES** -- beginning with the date the applicant was first authorized to work under Blue Card Status: Pay all applicable processing fees including application fees, biometrics fees. ees for national security, criminal background and fraud checks as well as fees to cover the administration of collecting such fees

When we look at all of these requirements together, what we seem to have is yet another, lower status (or non-status) that could be taken away at any time, similar to RPI status. It appears that this status would basically bind a person to the agricultural industry for 5-8 years with no real option of seeking other types of work until s/he adjusts to LPR status. Like RPI status and the requirements for adjustment of status, Blue Card status puts agricultural employees in a vulnerable position with their employers, who will be well aware that their status depends on proving the number of days worked per year. In an industry already prone to unhealthy and dangerous conditions and extremely physically demanding work, this makes it even more difficult to address grievances and for workers to organize in order to collectively demand just and safe working conditions.

*All information is from Senate Bill 744
“Border Security, Economic Opportunity, and Immigration
Modernization Act” Sections 2211 - 2215
<http://www.gpo.gov/fdsys/pkg/BILLS-113s744rs/pdf/BILLS-113s744rs.pdf>