NATIONAL INTEREST WAIVER (NIW) APPLICATIONS

TIEN-LI (TL) LOKE WALSH, ESQ.
LOKE WALSH IMMIGRATION LAW, PC
TL@LOKEWALSH.COM
WWW.LOKEWALSH.COM
(310) 454-7920
Employment-Based (EB) Green Cards

- **EB-1**
  - EB-1A Alien of Extraordinary Ability (self-petition)
  - EB-1B Outstanding Professor/Researcher
  - EB-1C Multinational Executive/Manager

- **EB-2**
  - National Interest Waiver (NIW)
  - PERM Labor Certification applications, including Schedule A, Special Handling for University/College Teachers

- **EB-3** – PERM applications
- **EB-4** – Religious Workers
- **EB-5** – Investment-based
EB-2 National Interest Waiver

Criteria (3 part test: Matter of Dhanasar)

- Applicant’s proposed endeavor has both substantial merit and national importance;
  - Science, business, technology, culture, health, education, entrepreneurialism
  - Test is “national importance” not “national in scope”
- Applicant is well positioned to advance the proposed endeavor; and
  - Education/skills/knowledge/record of success/model or plan for future activities/progress towards the endeavor/interest of potential customers/investors/users
- On balance, it would be beneficial to the U.S. to waive the requirements of a job offer and labor certification
Useful Evidence

- Should be national or international (not local/regional unless it’s prestigious)
- Publication of scholarly books and articles
  - How many is enough?
  - Does it matter if you are first-author?
  - Does it matter if there are hundreds of other authors?
  - Does it matter where you publish?
- Citation record – shows influence in the field - how much is enough?
- Testimonial/Reference Letters
  - Letters from US institutions better for NIW
  - How many do you need?
  - Does it matter who/where letter is from?
    - Credibility
    - Independent opinion? Bias?
Useful Evidence

- Participation, individually or on a panel, as the judge of the work of others (peer review activity – journals, conferences, grants, panels, Ph.D. committee)
  - Must complete, not just invited to do it
- Conference presentations
  - Oral presentations vs. posters
- National grants or funding
- Playing a critical role in scientific or research studies or for organization
- Awards – careful of single locality
  - Do student/post-doc awards/fellowships/travel grants count?
  - R-1/R-2 institutions
- Patents – pending/approved/licensed and in use
- Media coverage
- Membership in organizations
- Entrepreneurs
  - Job creation if at start-up
  - VC/angel funding
Tips to Build an NIW Case

- Publish or perish – international peer-reviewed journals
- Speak at national or international conferences
- Engage in peer-review activity for journals, conference committees, scientific boards
- Mainstream media coverage – do it!
NIW Process

- **EB-2 category (higher-degree or BA plus 5 years of experience)**

- **Two application phases:**
  - **I-140 Immigrant Visa Petition** (self petition or employer can also sponsor)
    - Premium processing – 45 business days
  - **I-485 Application to Adjust Status to Permanent Residence (AOS)**
    - Spouse/minor kids file I-485 at same time
    - Is there a foreign national significant other?
      - Must marry before principal applicant’s I-485 is approved
    - File I-485 concurrently or separately (priority date must be current to file concurrently)
Visa Bulletin

- Released by Department of State (DOS) every month
- Priority Date (PD) = date of filing of I-140 Immigrant Visa petition
- If retrogressed/backlogged – can’t file I-485 AOS until PD is current
- Two charts in Visa Bulletin
  - Final Action Dates (when immigrant visa/green card can be approved)
  - Dates for Filing (when I-485 adjustment of status can be filed)
- Once DOS releases Visa Bulletin, USCIS announces which chart to use for that month
## Final Action Dates – March 2024
(Date immigrant visa/green card can be approved)

<table>
<thead>
<tr>
<th>Employment-Based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA - mainland born</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>C</td>
<td>15 JUL 2022</td>
<td>01 OCT 2020</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>2nd (NIW)</td>
<td>22 NOV 2022</td>
<td>01 JAN 2020</td>
<td>01 MAR 2012</td>
<td>22 NOV 2022</td>
<td>22 NOV 2022</td>
</tr>
<tr>
<td>3rd</td>
<td>08 SEP 2022</td>
<td>01 SEP 2020</td>
<td>01 JUL 2012</td>
<td>08 SEP 2022</td>
<td>08 SEP 2022</td>
</tr>
</tbody>
</table>
### Dates for Filing – March 2024
(Date I-485 application can be filed)

<table>
<thead>
<tr>
<th>Employment-Based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA - mainland born</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>C</td>
<td>01 JAN 2023</td>
<td>01 JAN 2021</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>2nd (NIW)</td>
<td>15 FEB 2023</td>
<td>01 JUN 2020</td>
<td>15 MAY 2012</td>
<td>15 FEB 2023</td>
<td>15 FEB 2023</td>
</tr>
<tr>
<td>3rd</td>
<td>01 FEB 23</td>
<td>01 JUL 2021</td>
<td>01 AUG 12</td>
<td>01 FEB 2023</td>
<td>01 JAN 23</td>
</tr>
</tbody>
</table>
Impact of Retrogression

- Cannot file I-485 AOS until priority date is current
- If on H-1B, can extend beyond 6 years
  - 3 year increments
- Spouses can apply for H-4 EAD
New USCIS Filing Fees

- **I-140 filing fees**
  - Premium processing (optional): $2,805
  - Regular filing fees – new tiered system
    - Small employers/self-petition: $1,015
    - Employers with 26 or more F/T employees: $1,315
    - Non-profits: $510

- **I-485 filing fees**
  - No premium processing
  - No longer includes combo card – separate fee for EAD and Advance Parole (AP)travel document
    - Including EAD and AP: $2,330; kids under 14: $1,840
    - Without EAD and AP: $1,440; kids under 14: $950
Common Green Card Issues

- **Challenges? Unpredictability**
  - NIW much easier than EB-1A
  - Filing multiple cases? EB-1A and NIW?
    - Visa retrogression impacts strategy
- **When to start Green Card process 😊 Anytime!**
  - What is latest you should start?
    - 4.5 years into H-1B
- **Immigrant Intent**
  - Can you apply for green card if on J-1 or F-1 or TN or E-3 or H-1B1 (Chile/Singapore)?
- **Travel while I-485 AOS pending**
  - Advance Parole travel document/combo card
  - H-1B and L-1
I Have my Green Card, What Now?

- **Maintaining the green card**
  - Physical presence requirement
    - Extended absences from the U.S.
    - Taking sabbatical or job abroad?
  - Maintain ties to the United States

- **Becoming a U.S. citizen**
  - Employment-based: 5-year wait (can file in 90-day window prior to 5 years)
  - Marriage to US citizen: 3-year wait (can file in 90-day window prior to 3 years)

- **Problematic Issues:**
  - Break in continuity – physical presence
  - Filing taxes as a non-resident/failure to file taxes
  - Arrests
  - Males – failure to register for Selective Service Registration
Use Your Resources

- Be careful who you listen to!
- Be careful what you find online!
- Check in with International Office
- Use existing relationship with our law firm and others
  - Send your academic-style CV for assessment
  - No charge for consultations
Q & A

For follow-up questions:

Tien-Li Loke Walsh, Esq.

tl@lokewalsh.com

Kellyann Everly
Kellyann@lokewalsh.com

Erika Dixon
Erika@lokewalsh.com

Maridex Abraham
Maridex@lokewalsh.com

LOKE WALSH IMMIGRATION LAW, PC
10555 JEFFERSON BOULEVARD, SUITE A
CULVER CITY, CA 90232
T: (310) 454-7920