

NATIONAL INTEREST WAIVER (NIW) APPLICATIONS

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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)

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	15 JUL 2022	01 OCT 2020	C	C
2 nd (NIW)	22 NOV 2022	01 JAN 2020	01 MAR 2012	22 NOV 2022	22 NOV 2022
3rd	08 SEP 2022	01 SEP 2020	01 JUL 2012	08 SEP 2022	08 SEP 2022

Dates for Filing – March 2024

(Date I-485 application can be filed)

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01 JAN 2023	01 JAN 2021	C	C
2 nd (NIW)	15 FEB 2023	01 JUN 2020	15 MAY 2012	15 FEB 2023	15 FEB 2023
3rd	01 FEB 23	01 JUL 2021	01 AUG 12	01 FEB 2023	01 JAN 23

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:

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