



FRAGOMEN
WORLDWIDE

U.S. Immigration Regulations: Teaching, Studying, or Conducting Research in the United States

July 25, 2018

WITH YOU
TODAY



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TODAY'S PRESENTATION

1. Overview of Immigration System
2. Nonimmigrant Visas
3. Immigrant Visas
4. Immigration Reform



01

OVERVIEW OF THE IMMIGRATION SYSTEM

BROAD IMMIGRATION OVERVIEW

3 Categories of People in the U.S.

- Citizens
- Immigrants
- Nonimmigrants



INVOLVED GOVERNMENT AGENCIES

Department of Homeland Security:

- United States Citizenship and Immigration Services - USCIS (formerly the Immigration & Naturalization Service – INS or BCIS)
- Immigration & Customs Enforcement – ICE
- Customs & Border Protection – CBP

Department of Labor:

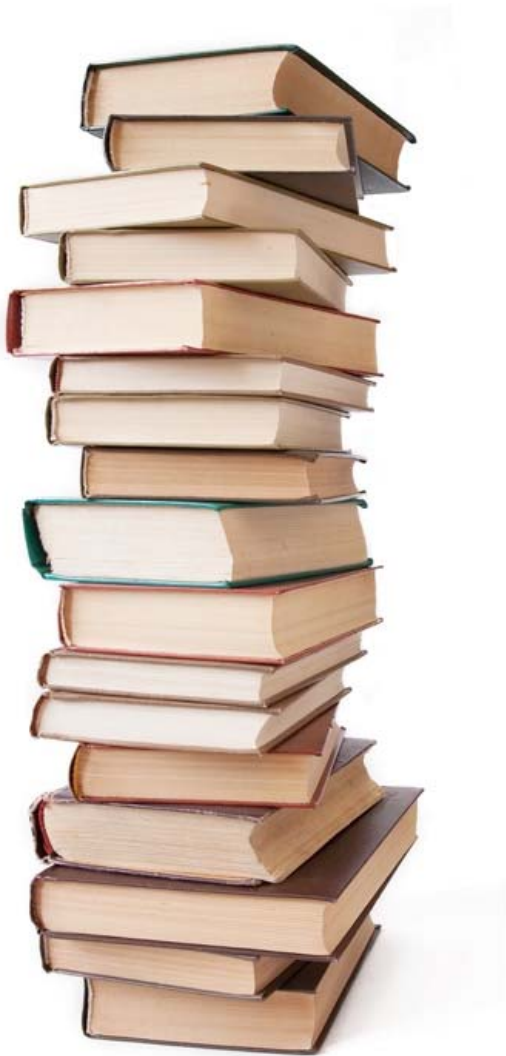
- Office of Foreign Labor Certification Customs
- PERM Processing Centers
- State Workforce Agencies (SWAs)

Department of State (DOS):

- U.S. Embassies and Consulates



LEGAL STRUCTURE & RESOURCES



- Immigration Law comes from many different places:
 - Immigration and Nationality Act (INA)
 - Regulations – CFR 8 (immigration), 20 (labor), & 22 (Department of State)
 - USCIS memoranda
 - Foreign Affairs Manual (FAM)
- Two Major Themes We are Seeing:
 - **Inconsistencies**
 - **Always changing**

A collage of travel-related items: a blue pencil, a brown passport cover with 'PASSPORT' embossed in gold, a US visa with 'VISA' in large letters, and a passport photo.

02

NONIMMIGRANT VISAS

NONIMMIGRANTS



- Coming to the U.S. temporarily
- Retain residence abroad
- Dual intent - only for H's and L's
- “Alphabet Soup” - A-V

ALPHABET SOUP OF VISAS

- A: Govn Officials
- B: Visitors
- C: Aliens in Transit
- D: Crewmen
- **E: Treaty Traders & Investors**
- **E-3: Australian Temporary Workers**
- **F: Academic or Language Students**
- G: Int'l Organization Representatives
- **H: Temporary Workers**
- I: Media Representatives
- **J: Exchange Visitors**
- K: Fiance/Spouse of US Citizens
- **L: Intracompany Transferees**
- M: Vocational Students
- N: Parents/Children of Special Immigrants
- **O: Extraordinary Ability**
- P: Artists, Athletes, Entertainers
- Q: Cultural Exchange
- R: Religious Workers
- S: Witnesses & Informants
- T: Victims of Human Trafficking
- **TN: Canadian & Mexican Temporary Workers**
- U: Victims of Certain Crimes
- V: Spouses & Minor Children of LPRs
- W, X, Y, Z: Coming Soon?



F-1 Students

F-1: Visa for full-time study in the US

Six employment programs for F-1's:

- On campus
- Severe Economic Hardship
- Special Student Relief
- Internship with international organization
- Curricular Practical Training
- Optional Practical Training



F-1 Students

Curricular Practical Training (CPT)

- Integral part of established curriculum: What does that mean?!?!?
 - Decided by each individual school
 - Examples:
 - Required for all students
 - Required for a particular course
 - Through a cooperative agreement
 - School endorsed I-20 (issued via SEVIS System)
 - Can be internship, practicum, coop, work/study, or similar program
- Attended ICE approved school for full academic year in any nonimmigrant status; certain grad students may begin immediately
- Available part-time or full-time
- One year or more of full-time CPT makes you ineligible for OPT at that educational level

F-1 Students

Optional Practical Training (OPT)

- “Optional Practical Training:” pre- or post-graduation
 - Total = 12 months; part-time during school year, full-time during vacations and after graduation
 - Need employment authorization document (EAD);
 - Not tied to particular employer
 - Employment related to degree program
- One year of full-time OPT for each academic level (Associate’s, Bachelor’s, Master’s, Professional, PhD). OPT can’t be “saved” for future degree programs; very hard to cancel after card received
- Apply up to 90 days before graduation and up to 60 days after graduation
- Part-time OPT counts one-half of full-time rate
- Can have up to 90 days of unemployment (Volunteer instead!)
- You can start a business and be self-employed
- STEM Majors: Eligible for 24-month extension

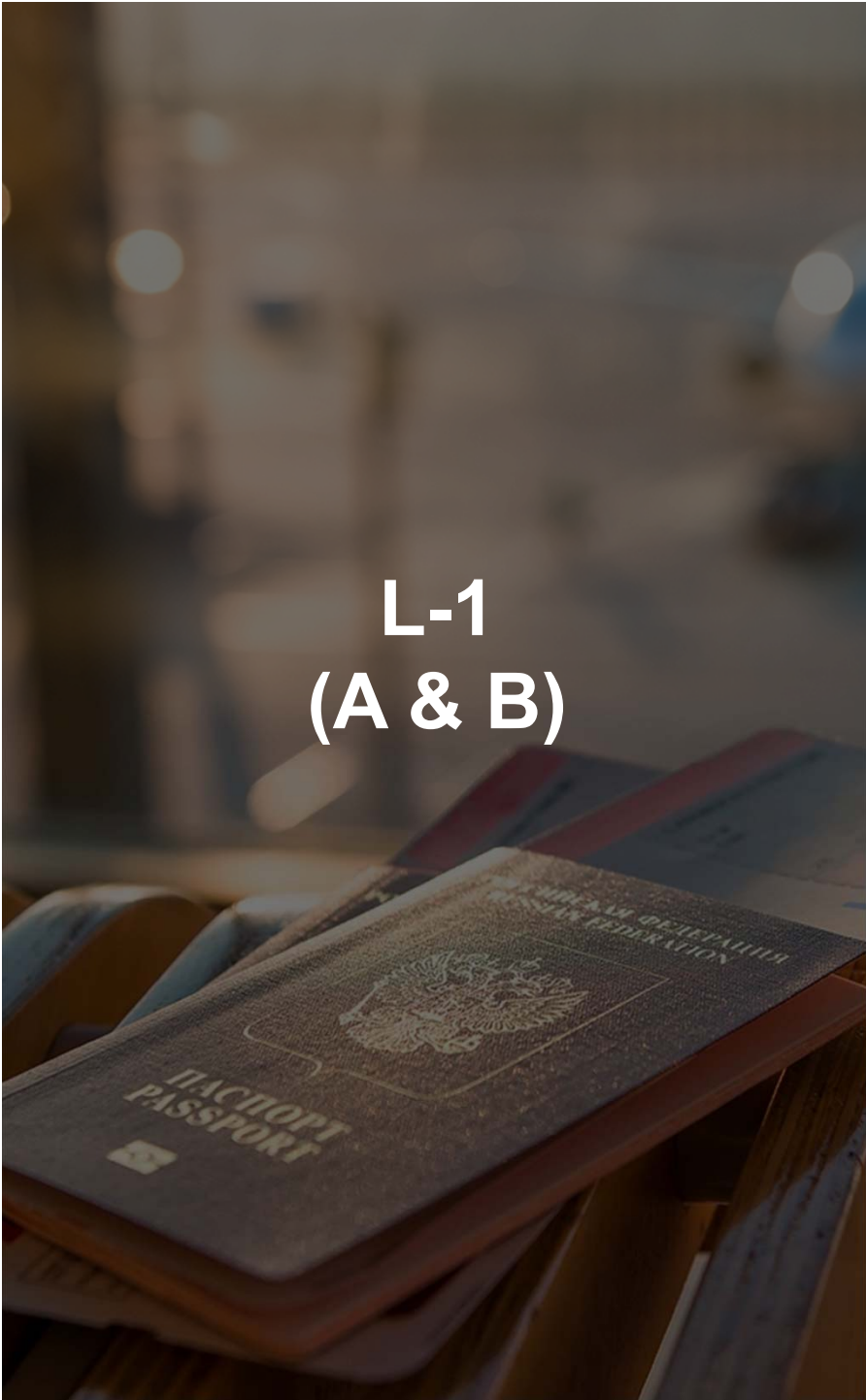
J-1 EXCHANGE VISITORS

- Categories include trainees, interns, research scholars, specialists, students, au pairs, etc. (approximately 15 total)
- Some J's must return to home country for 2 years after completion of program or seek waiver
 - Skills list
 - Government funding
 - Graduate medical education
- J-1 Students can get practical training (similar to OPT)
 - 18 months max for pre-doctoral students; 36 months for Ph.D.s
 - Total training period can't exceed the period of full course of study
 - Academic training permitted during or after school
- J-1 Research Scholar: Entering the United States for the primary purpose of conducting research that does not exceed 5 years
- J-1 Short-Term Scholar: Entering the United States for the primary purpose of conducting research that does not exceed 6 months



H-1B

- “Specialty Occupation” -- Entry level requirement = minimum Bachelor Degree or equivalent
- Six-year maximum stay (with exceptions); each H-1B can be valid for up to 3 years maximum
- 65,000 annual ceiling, of which 6,800 are set aside for citizens of Chile and Singapore
- 20,000 additional visas allocated to holders of advanced degrees from U.S. universities
- 4/1/18 – 4/5/18: 190,000 H-1B application (including Master’s CAP)
- Cap Subject vs. Cap Exempt
 - Cap Subject: File on 4/1 for a start date of 10/1
 - Cap Exempt: File at any time
 - 1) Colleges & Universities
 - 2) Organizations affiliated with colleges & universities (UM Hospital)
 - 3) Non-profit research entities and government research
- Must meet prevailing wage requirements



L-1 (A & B)

- Allows for Dual Intent
- Intracompany Relationship:
 - Parent, subsidiary, affiliate, branch or joint venture
- Prior Employment Abroad:
 - 1 year within 3 years preceding transfer to U.S.
- Qualifying Capacity:
 - Executive, Managerial (L-1A)
 - “Specialized” Knowledge (L-1B)
- Duration:
 - L-1A = 7 years
 - L-1B = 5 years

E-1 & E-2

Treaty Countries

| Country | Classification |
|------------------------|----------------|
| Albania | E-2 |
| Argentina | E-1 & E-2 |
| Armenia | E-2 |
| Australia | E-1 & E-2 |
| Austria | E-1 & E-2 |
| Azerbaijan | E-2 |
| Bahrain | E-2 |
| Bangladesh | E-2 |
| Belgium | E-1 & E-2 |
| Bolivia | E-1 & E-2 |
| Bosnia and Herzegovina | E-1 & E-2 |
| Brunei | E-1 |
| Bulgaria | E-2 |
| Cameroon | E-2 |
| Canada | E-1 & E-2 |
| Chile | E-1 & E-2 |
| China (Taiwan) | E-1 & E-2 |
| Colombia | E-1 & E-2 |
| Congo (Brazzaville) | E-2 |
| Congo (Kinshasa) | E-2 |
| Costa Rica | E-1 & E-2 |
| Croatia | E-1 & E-2 |
| Croatia | E-2 |
| Czech Republic | E-2 |
| Denmark | E-1 & E-2 |
| Ecuador | E-2 |
| Egypt | E-2 |
| Estonia | E-1 & E-2 |

| Country | Classification |
|---------------|----------------|
| Ethiopia | E-1 & E-2 |
| Finland | E-1 & E-2 |
| France | E-1 & E-2 |
| Georgia | E-2 |
| Germany | E-1 & E-2 |
| Greece | E-1 |
| Grenada | E-2 |
| Honduras | E-1 & E-2 |
| Iran | E-1 & E-2 |
| Ireland | E-1 & E-2 |
| Israel | E-1 |
| Italy | E-1 & E-2 |
| Jamaica | E-2 |
| Japan | E-1 & E-2 |
| Jordan | E-1 & E-2 |
| Kazakhstan | E-2 |
| Korea (South) | E-1 & E-2 |
| Kosovo | E-1 & E-2 |
| Kyrgyzstan | E-2 |
| Latvia | E-1 & E-2 |
| Liberia | E-1 & E-2 |
| Lithuania | E-2 |
| Luxembourg | E-1 & E-2 |
| Macedonia | E-1 & E-2 |
| Mexico | E-1 & E-2 |
| Moldova | E-2 |

| Country | Classification |
|-----------------|----------------|
| Mongolia | E-2 |
| Montenegro | E-1 & E-2 |
| Morocco | E-2 |
| Netherlands | E-1 & E-2 |
| Norway | E-1 & E-2 |
| Oman | E-1 & E-2 |
| Pakistan | E-1 & E-2 |
| Panama | E-2 |
| Paraguay | E-1 & E-2 |
| Philippines | E-1 & E-2 |
| Poland | E-1 & E-2 |
| Poland | E-2 |
| Romania | E-2 |
| Serbia | E-1 & E-2 |
| Serbia | E-2 |
| Senegal | E-2 |
| Singapore | E-1 & E-2 |
| Singapore | E-2 |
| Slovak Republic | E-2 |
| Slovenia | E-1 & E-2 |
| Slovenia | E-2 |
| Spain | E-1 & E-2 |
| Sri Lanka | E-2 |
| Suriname | E-1 & E-2 |
| Sweden | E-1 & E-2 |
| Switzerland | E-1 & E-2 |

| Country | Classification |
|-------------------|----------------|
| Thailand | E-1 & E-2 |
| Togo | E-1 & E-2 |
| Trinidad & Tobago | E-2 |
| Tunisia | E-2 |
| Turkey | E-1 & E-2 |
| Ukraine | E-2 |
| United Kingdom | E-1 & E-2 |
| Yugoslavia | E-1 & E-2 |

O-1 VISA FOR PEOPLE OF **EXTRAORDINARY ABILITY**

- The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics
- To qualify for an O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.
- Employer specific; but can hold dual O-1s
- Anyone still subject to INA 212e (J-1 2 year home residence requirement) can obtain an O-1 visa
- 3 years for first O-1 (1 year renewals), renewable indefinitely
- Inconsistent Adjudications: Weak cases approved; strong cases denied
 - May be worth looking into for individuals with Ph.D.s or individuals with strong business backgrounds, high salaries, etc.





O-1 VISA CRITERIA

MUST MEET 3 OF THE BELOW CRITERIA

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- Membership in associations in the field for which classification is sought which require outstanding achievements, as judged by recognized national or international experts in the field
- Published material in professional or major trade publications, newspapers or other major media about the beneficiary and the beneficiary's work in the field for which classification is sought
- Original scientific, scholarly, or business-related contributions of major significance in the field
- Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought
- A high salary or other remuneration for services as evidenced by contracts or other reliable evidence
- Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought
- Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation

H-1B1 FOR CHILE/SINGAPORE NATIONALS



- For citizens of Chile and Singapore only
- Similar to the H-1B in that the primary requirement is an offer of employment in a specialty occupation
- Prevailing wage and LCA required; but can apply directly at the Embassy (similar to E-3)
- NO dual intent
- 1,400 available for Chile
- 5,400 available for Singapore
- 1 year validity; renewable indefinitely



E-3 VISA FOR AUSTRALIAN NATIONALS



- Visa category for citizens of Australia to take up professional positions in the U.S. – 10,500 per year available
- Job offered must be for a “specialty occupation” as defined for H-1B visa category
- Requires certified LCA and prevailing wage determination
- Visas can be applied for at consulates without prior USCIS approval
- Filings can be submitted to USCIS, but premium processing is not available
- 2-year validity; renewable indefinitely
- Dependent spouses may apply for employment authorization
- 240 day rule DOES apply; but NO portability; NO premium processing

TN CATEGORY FOR CANADIAN & MEXICAN PROFESSIONALS



- Must be nationals of either Canada or Mexico
- Coming to U.S. to work in profession listed on NAFTA schedule and must be sponsored by employer
- Generally require a Bachelors degree in field
- Canadians apply at border (non-national dependents must obtain visa at U.S. Consulate)
- Mexicans apply at Consulate
- Three year increments, renewable indefinitely
- Extensions and changes of status may be filed at USCIS Service Center



TN OCCUPATIONS

General

- Accountant
- Architect
- Computer Systems Analyst
- Disaster Relief Insurance Claims Adjuster
- Economist
- Engineer
- Forester
- Graphic Designer
- Hotel Manager
- Industrial Designer
- Interior Designer
- Land Surveyor
- Landscape Architect
- Lawyer
- Librarian
- Management Consultant
- Mathematician
- Range Manager/Range Conservationist
- Research Assistant
- Scientific Technician/Technologist
- Social Worker

- Sylviculturist
- Technical Publications Writer
- Urban Planner
- Vocational Counsellor

Medical/Allied Professional

- Dentist
- Dietitian
- Medical Laboratory Technologist
- Medical Technologist
- Nutritionist
- Occupational Therapist
- Pharmacist
- Physician
- Physiotherapist/Physical Therapist
- Psychologist
- Recreational Therapist
- Registered Nurse
- Veterinarian

Scientist

- Agriculturist
- Animal Breeder
- Animal Scientist

- Apiculturist
- Astronomer
- Biochemist
- Biologist
- Chemist
- Dairy Scientist
- Entomologist
- Epidemiologist
- Geneticist
- Geologist
- Geochemist
- Geophysicist
- Horticulturist
- Meteorologist
- Pharmacologist
- Physicist Plant Breeder
- Poultry Scientist
- Soil Scientist
- Zoologist

Teacher

- College
- Seminary
- University

B-1

Business Visitors

- On foreign payroll
- Activity in U.S. benefits foreign employer
 - Business meetings, training, & joint development projects
- Visa Waiver Program
 - 27 participating countries
 - 90-day maximum stay
 - Ineligible for change of status



03

GREENCARD OVERVIEW

IMMIGRANTS



- “Green card holders” = “Permanent residents” = “Immigrants”
- Coming to U.S. permanently
- Numerically limited
 - Visa bulletin
 - Priority date
- Can become U.S. citizens after 3 - 5 years

HOW TO GET A **GREENCARD**

1. Family
2. Work
3. Diversity Lottery
4. Asylum
5. Cuban-Adjustment Act



DIVERSITY LOTTERY

- 50,000 green cards given out each year (about 15 million applicants); must apply during the month of October at this website:
<https://www.dvlottery.state.gov/>
- Odds of winning the Powerball jackpot? 1 in 195,249,054
- Who is NOT eligible? Persons BORN in: Bangladesh, Brazil, Canada, China (mainland born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.
- Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.
- Last year, the most winners came from: Ethiopia, Cameroon, Liberia, Congo, Egypt, Iran, Nepal, Russia, Ukraine, Uzbekistan



FAMILY-BASED PERMANENT RESIDENCE

- Quick Process: Immediate relatives (spouses, minor children & parents of U.S. citizens)
- Slow Process: Other close family members of citizens or permanent residents can sponsor a foreign national, including:
 1. Unmarried sons & daughters of citizens (over age 21)
 2. Spouses & children of LPRs (2A) & unmarried sons/daughters of LPRs (2B)
 3. Married sons & daughters of citizens
 4. Brothers & sisters of citizens



AUGUST 2018

FAMILY BULLETIN

| Family-Sponsored | All Chargeability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
|------------------|---|---------------------|---------|---------|-------------|
| F1 | 08MAY11 | 08MAY11 | 08MAY11 | 01AUG97 | 01AUG06 |
| F2A | 22JUL16 | 22JUL16 | 22JUL16 | 01JUL16 | 22JUL16 |
| F2B | 22OCT11 | 22OCT11 | 22OCT11 | 01APR97 | 15FEB07 |
| F3 | 15JUN06 | 15JUN06 | 15JUN06 | 01DEC95 | 01MAY95 |
| F4 | 22DEC04 | 22DEC04 | 22MAR04 | 15JAN98 | 22APR95 |

EMPLOYMENT-BASED CATEGORIES

EB-1: Priority Workers

EB-2: Advance-degree professionals & aliens of exceptional ability

EB-3: Professional, skilled & unskilled workers* (*labor certification required)

EB-4: Special Immigrants

EB-5: Employment Creation (Investors)



AUGUST 2018

EMPLOYMENT BULLETIN

| Employment-based | All Chargeability Areas Except Those Listed | CHINA-mainland born | EL SALVADOR GUATEMALA HONDURAS | INDIA | MEXICO | PHILIPPINES |
|-------------------------------------|---|---------------------|--------------------------------------|---------|--------|-------------|
| 1st | C | C | C | C | C | C |
| 2nd | C | 01APR15 | C | 22MAY09 | C | C |
| 3rd | C | 01JAN16 | C | 01MAY09 | C | 01JUL17 |
| Other Workers | C | 01JUN08 | C | 01MAY09 | C | 01JUL17 |
| 4th | C | C | 01MAY16 | C | C | C |
| Certain Religious Workers | C | C | 01MAY16 | C | C | C |
| 5th Non-Regional Center (C5 and T5) | C | 01OCT14 | C | C | C | C |
| 5th Regional Center (I5 and R5) | C | 01OCT14 | C | C | C | C |

EB-1 vs. EB-2 vs. EB-3

- **EB-3:** Jobs that require a Bachelor's degree
 - Employer sponsorship ALWAYS required
- **EB-2:** Jobs that require an advanced degree (or Bach + 5)
 - Employer sponsorship required EXCEPT for National Interest Waiver
- **EB-1:** Priority workers (no labor certification)
 - Persons of extraordinary ability (similar to the O-1 nonimmigrant category)
 - Employer sponsorship NOT required
 - Outstanding professors & researchers
 - Employer sponsorship required
 - Multinational executives/managers
 - Employer sponsorship required



EB-1 OUTSTANDING PROFESSOR/RESEARCHER

- The beneficiary must demonstrate international recognition for his/her outstanding achievements in a particular academic field.
- The beneficiary must have at least 3 years experience in teaching or research in that academic area.
- The beneficiary must be entering the United States in order to pursue tenure or tenure track teaching or comparable **permanent** research position at a university or other institution of higher education;
- Post-Doc positions do not qualify!
- Must meet 2 of 6 criteria:
 1. Evidence of receipt of major prizes or awards for outstanding achievement
 2. Evidence of membership in associations that require their members to demonstrate outstanding achievement
 3. Evidence of published material in professional publications written by others about the alien's work in the academic field
 4. Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
 5. Evidence of original scientific or scholarly research contributions in the field
 6. Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

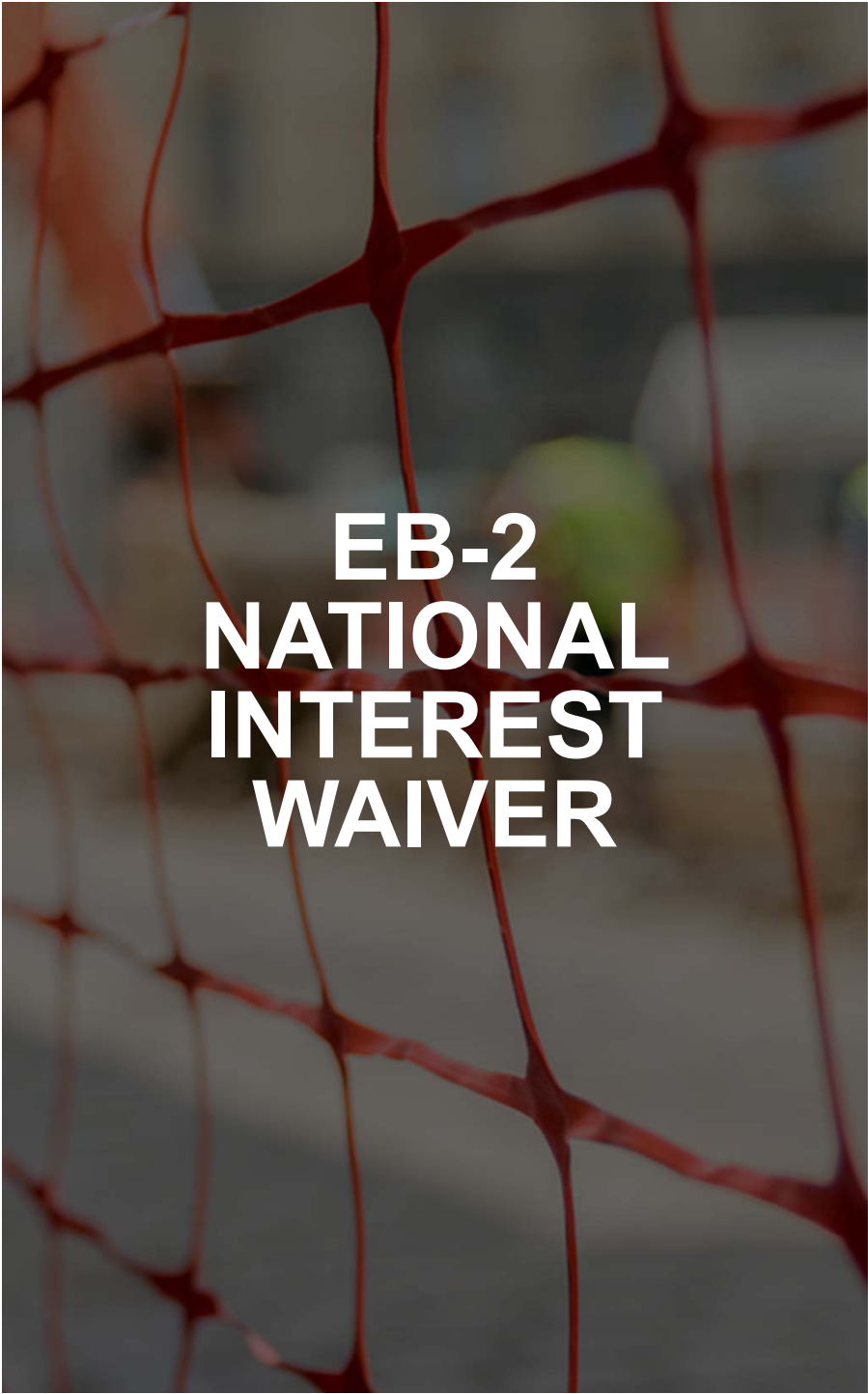
EB-1

EXTRAORDINARY ABILITY

- Does not require a job offer or a permanent position (Post-Docs can qualify); can self-petition
- Extraordinary Ability = “Level of expertise indicating that the individual is one of those few who have risen to the top of the field of endeavor”
- Higher standard than “exceptional ability” or “outstanding”
- Must meet 3 of 10 criteria:
 1. Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
 2. Evidence of the beneficiary’s membership in associations in the field which demand outstanding achievement of their members
 3. Evidence of published material about you in professional or major trade publications or other major media
 4. Evidence that the beneficiary has been asked to judge the work of others, either individually or on a panel
 5. Evidence of the beneficiary’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
 6. Evidence of the beneficiary’s authorship of scholarly articles in professional or major trade publications or other major media
 7. Evidence that the beneficiary’s work has been displayed at artistic exhibitions or showcases
 8. Evidence of the beneficiary’s performance of a leading or critical role in distinguished organizations
 9. Evidence that the beneficiary commands a high salary or other significantly high remuneration in relation to others in the field
 10. Evidence of the beneficiary’s commercial successes in the performing arts

EB-2/EB-3 EMPLOYMENT-BASED **PERMANENT RESIDENCE**

- **Step 1: Labor Certification (not required for National Interest Waiver)**
 - Filed by employer on behalf of foreign national
 - Processed under PERM system by DOL
 - Employer must prove that they were unable to find any minimally qualified US applicants who are ready, willing and able to fill the position
 - Prevailing Wage Required (must be issued by National Prevailing Wage Center)
 - By law, all fees (attorney fee and advertising) for Step 1 must be paid by employer
- **Step 2: Immigrant Petition for Alien Worker (Form I-140)**
 - Filed by employer
 - Processed by USCIS
 - Can be paid by employer or employee (\$700 government fee per family)
- **Step 3: Adjustment of Status (Form I-485) or Consular Processing**
 - Filed by the foreign national & family members
 - Can be paid by employer or employee (\$1225 government fee per applicant)



EB-2 NATIONAL INTEREST WAIVER

- Foreign nationals seeking a national interest waiver are requesting that the Labor Certification be waived because it is in the interest of the United States.
- Though the jobs that qualify for a national interest waiver are not defined by statute, national interest waivers are usually granted to those who have exceptional ability and whose employment in the United States would greatly benefit the national interest.
- Those seeking a national interest waiver may self-petition (they do not need an employer to sponsor them) and may file their labor certification directly with USCIS along with their Form I-140, Petition for Alien Worker.
- 3 Criteria:
 1. The foreign national's proposed endeavor has both substantial merit and national importance.
 2. The foreign national is well positioned to advance the proposed endeavor.
 3. On balance, it would be beneficial to the United States to waive the job offer and labor certification requirements of the EB-2 category.
- Good category for STEM Ph.D's




04

IMMIGRATION REFORM

IMMIGRATION REFORM???

- Travel Ban
- H-1B Changes
- Increased Scrutiny
- Visa Delays at Embassy
- Compliance
- Merit Based Immigration
- Buy American
- Hire American
- Green Card Interviews
- Delays, delays, delays



The background of the slide is a close-up photograph of a textured surface, possibly glass or metal, covered with numerous small water droplets. A large, thick, orange-colored swirl or smudge is visible on the right side of the image, partially overlapping the text area.

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