



BASHYAM SPIRO^{LLP} | IMMIGRATION
LAW GROUP

Tired of Long PERM and Visa Backlogs?
Self Sponsorship Options for Obtaining
Permanent Residency
*Extraordinary Ability and National
Interest Waiver*

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Introducing...



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What is the Problem?

- ❖ **Only 140,000** Employment-Based Immigrant Visas Allocated Each Year
- ❖ Among **5** Preference Categories
- ❖ **Long Visa Backlog** in Most of These Categories, *Especially for Indian and Chinese Nationals*
- ❖ Permanent Residency Application Could Take Between **5-10 Years** in Some Cases





The Typical Employment-Based Permanent Residency Process:

❖ 1st Step: PERM

❖ *Establishes Priority Date*



❖ 2nd Step: I-140 Immigrant Petition for Alien Worker

❖ 3rd Step: I-485 Adjustment of Status

❖ *Can't File Until Visa Becomes Available*



April 2010 Visa Bulletin

**All Chargeability Areas Except Those Listed - CHINA-
mainland born – INDIA - MEXICO - PHILIPPINES**

1st: All Current

2nd: C - 22AUG05 - 01FEB05 - C - C

3rd: 01FEB03 - 01FEB03 - 08SEP01 - 01JUL02 - 01FEB03

Bulletin Available at State Department Web Site:

http://travel.state.gov/visa/frvi/bulletin/bulletin_4747.htm



Can I Sponsor Myself for U.S. Residency?

- ❖ **EB-1:** Persons of Extraordinary Ability
- ❖ **EB-2:** Aliens with Exceptional Ability (U.S. National Interest)

Benefits:

- ❖ No PERM Labor Certification Required
- ❖ I-140/I-485 Can Be Filed *Together* (Unless Indian or Chinese National in the EB-2 NIW Category)
- ❖ Fast USCIS Processing



EB-1-A – Persons of Extraordinary Ability

- ❖ In the Sciences, Arts, Education, Business or Athletics
- ❖ One of a Small Percentage Who Has Risen to Very Top of *Field of Endeavor*
- ❖ Sustained National or International Acclaim or Recognition in the *Field of Expertise*
- ❖ Seek to Enter the U.S. to Continue Work in Area of Extraordinary Ability
- ❖ Entry will Substantially Benefit Prospectively the U.S.



EB-1-A – Persons of Extraordinary Ability

- ❖ **Self** Petitioning
- ❖ **Proof:** Major Award Recipient (Nobel Prize, Olympic Medal, Oscar or Grammy, etc.)
- ❖ Must Meet ***Three of Ten*** Criteria Set Forth in the Regulations or Present Comparable Evidence





Criteria for Extraordinary Ability

Must Meet At Least (3) Three

- ❖ Receipt of Lesser National or International **Awards**
- ❖ **Membership** in Associations which Require **Outstanding Achievements**
- ❖ **Published** Material About the Applicant or Work
- ❖ Participation as **Judge** of Other's Work
- ❖ Original **Contributions** of **Major Significance**
- ❖ Authorship of **Scholarly Articles**
- ❖ **Display of Work** at Exhibitions or Showcases
- ❖ Performance in a **Leading or Critical Role** for Organizations that Have a Distinguished Reputation
- ❖ Command of **High Salary**
- ❖ **Commercial Success** in the **Performing Arts**



Observations

- ❖ Mere Presentation of Evidence Which Relates to (3) Three of the Listed Criteria *Does Not Guarantee an Approval*
- ❖ Accomplishments Must be *Significant*
- ❖ **RFE/NOID:** Indicate that USCIS Wants *More Proof* that Alien Stands out Among Those In the Field



Lesser National or International Awards

- ❖ AAO Has Held That Regular Student Prizes, Awards and Fellowships Do Not Meet this Criterion
- ❖ Must *Analyze* Each Award To See if It Could Meet This Standard
- ❖ **Grant Awards**
 - ❖ Some Are Based on Prior Achievements and are Peer-Reviewed
 - ❖ Sometimes Getting a Large Financial Grant from a Distinguished Organization Can Be Proof of Significant Accomplishment
 - ❖ Must Look at the Details of Each Grant Award



Memberships

❖ AAO Criterion Includes:

- ❖ “The Most Prestigious Associations, such as the National Academy of Sciences, which are Extremely Restrictive in their Membership Requirements”
- ❖ Would *NOT* Include Professional Associations Where Membership is Based on *Payment of a Fee*
- ❖ Membership Must Be Limited To Those *Chosen* as a Basis of Significant Contributions in their Field
- ❖ **Must Show *Criteria for Membership***



Published Material About the Applicant ...or Their Work

❖ Must be Published in *Major* National/International Publications

❖ Articles That Describe and Detail Alien's Work are Effective

❖ Problem With Using Academic Citations



❖ **Remember:** That Proving International Acclaim is Key



Original Contributions of Major Significance

- ❖ **Best Way To Prove is Through Expert Opinion Letter:**
 - ❖ Not Standard Recommendation Letters
 - ❖ Focus on Alien's Work and Accomplishments in the Field of Endeavor
 - ❖ Written By People Who Are Accomplished in the Field
 - ❖ Write Objectively About Your Accomplishments
 - ❖ Should NOT be Formulaic
- ❖ **USCIS RFE:** "Provide Additional Evidence, from Individuals *Outside Your Prior and Immediate Circle of Colleagues and Acquaintances.....*"
- ❖ **How Many Letters are Needed?** 8-10 Letters is a Good Number
- ❖ **Patents:** Not as Influential with USCIS unless Patent is Widely-Used
- ❖ Academic Citations



Authorship of Scholarly Articles

- ❖ # of Publications, How Many Times You are First Author, and the Impact Factor of Those Publications
- ❖ Citation Record can also Help Establish Distinction
- ❖ Make Sure Expert Letters Discuss Significance of Publications and the Journals
- ❖ Citation Record Must Reflect That Publication History is Consistent with International Recognition
- ❖ ***USCIS vs. Regulations***
 - ❖ **USCIS:** Having Scholarly Publication is NOT Automatic Evidence of Extraordinary Ability or International Recognition
 - ❖ **Regs:** Journals Do Not Have to Be Prominent or Publications of a Particular Caliber
- ❖ **Questions To Ask Yourself.**
 - ❖ Are Publications Nationally or Internationally Recognized in the Field?
 - ❖ How Many Citations are Enough? 50? 100?



Judge of the Work of Others

- ❖ ***USCIS Practice vs. Regulatory Criterion***

- ❖ **USCIS:** Many Researchers Are Reviewers; Present Evidence Participation was Result of Significant Accomplishments
- ❖ **Regs:** Only Participation as Judge of Work of Others; *Buletini vs. INS*

- ❖ Editorial Boards, Conference Panels, Conference Organizing Panels Can Also Be Effective

- ❖ ***Provide Evidence*** on the Publication to Prove it is Major Nationally or Internationally in the Field (ie. Impact Factor)

- ❖ ***Cite How Many Times*** You Have Been a Reviewer





EB-2: National Interest Waiver (NIW)

❖ NIW in Arts, Sciences, Business:

❖ Advanced Degree or Exceptional Ability

❖ Your Work is Deemed in the U.S.

❖ “National Interest?” → No PERM Labor Certification or Job Offer Needed



❖ Case Can Be Filed By You or Your Employer



NIW Criteria

❖ “National Interest” Not Defined in The Statute

❖ USCIS Uses Three-Pronged Test from *Matter of New York State Department of Transportation (NYSDOT)* Case:

1. The Work Must Be In An Area of “Substantial Intrinsic Merit” (ie. health, economy, education, environment, etc.)
2. The Benefit of the Employment Must be National in Scope; and
3. The National Interest Would Be Adversely Affected if a Labor Certification Were Required



NIW Cont'd

- ❖ **NYSDOT Footnote:** Applicant Must Have Exerted “Influence on The *Field* as a Whole”
- ❖ **Test:** Will The Applicant Prospectively Serve The National Interest To A Substantially Greater Degree Than Do Other Qualified Workers in the Field?
- ❖ **Prove It Through** “Established Record of Achievement”
- ❖ Standard Lower Than EB-1 Extraordinary Ability; ‘Risen To Very Top’ Reqm’t Not Needed for NIW
- ❖ Use *Similar Types of Evidence* as EB-1 Extraordinary Ability Case to Prove Third Prong of NYSDOT Test



Both EB-1 and NIW: Define the 'Field'

- ❖ Statute, USCIS Regs, and NYSDOT Do Not Define 'Field'
- ❖ USCIS Will Compare You To Others in Your Field, so the Field Must Be Carefully Defined
- ❖ **Define Field Broadly or Narrowly?** *Depends on the Facts.*
- ❖ Common RFE Q: "Provide A List of Five to Ten Names of People Who Are At The Very Top of the Foreign National's Field of Endeavor.....Place Foreign Nationals Name...Among the Ranking"
 - ❖ **Example:** If Field is Comprised of 10,000 Practitioners, You Would Only Need to Be in Top 500 to 1000 to Meet EB-1 Standard
- ❖ Ranking Question Inappropriate for NIW Cases



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QUESTIONS?

*Please Type Your Question into
the Chat Box on the Webinar
Panel...*





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THANK YOU!

**Join Us for Our Next Webinar on I-601 Hardship
Waivers on Wednesday, May 12, 2010**

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