

The Trials And Tribulations Of Highly Educated Immigrants by [Victoria Donoghue](#)

In today's global economy, for the US to remain a leader in education, the arts, sciences, and business, it needs to be able to recruit the best and the brightest. In a world no longer constrained by national borders, recruiting top talent necessarily entails an ability to attract the highly educated and highly skilled from abroad. Fortunately, US Immigration law permits this type of recruitment and hiring. In fact, the law has long favored highly educated and highly skilled foreign nationals; these individuals should be able to obtain a "green card" or lawful permanent residence with relative ease.

While the statutory scheme is intended to permit the entry of top foreign talent into our labor force, the way the law is currently administered has just the opposite effect- instead it deprives the country of the outstanding and talented foreign nationals. There are two major administrative roadblocks: numerical limitations on the number of green cards available and inconsistent and often confounding adjudication of petitions by the US Citizenship and Immigration Services (USCIS).

Employment-based immigration is subject to a numerical limitation of approximately 140,000 immigrant visas per year. This is quite low relative to the demand, and results in inordinate delay (as much as 9 years) in the processing of visas. As for the problems raised by adjudication, real-life stories of people caught up in our system are the best way to illustrate the realities of what immigrants face and just how discouraging it can be. What follows are five such stories:

Jin Yuelin

Jin Yuelin and his employer, a university in the Northeast, applied for a green card based on the fact that he is an "Outstanding Researcher or Professor" within the meaning of the law. The application was denied because USCIS found that the evidence did not establish that he is outstanding. The academic institution has appealed this decision and is awaiting a determination. In the meantime, Dr. Yuelin's life is in limbo. In a recent trip to his native China, he was offered a position by a Chinese employer who was quick to see the value that this employee would add. Dr. Yuelin declined because he wants to remain with his US employer, but he did so with great anxiety.

To the eyes of all but USCIS, Jin Yuelin is clearly among the best and the brightest. His academic field is Geography, specializing in Geographic Information Science (GIS). GIS is the academic theory behind the development of geographic information systems. The GPS that so many of us enjoy in our automobiles is a type of geographic information system. Over his career, Dr. Yuelin has published 30 scholarly articles in peer-reviewed journals, has developed a widely used geographic software package, has had his work cited by other scientists in the field as authoritative over 300 times, has served as a reviewer of the scientific work of others, has been awarded numerous research grants, and has presented his original research findings at scientific symposia all over the world. In support of the petition filed before CIS, eight internationally known scientists wrote letters to CIS attesting to his outstanding abilities.

Scientists with less going for them are approved by CIS as outstanding researchers on a regular basis. But, for some reason, Dr. Yuelin's petition was not. To immigration practitioners, inconsistent adjudications such as this one are nothing new. While practitioners don't know for certain, it is believed that the inconsistent adjudications are not caused by any change in policy at USCIS. Rather, they are the result of differences in the amount of training and supervision given to adjudication officers, varying levels of ability on the part of the officers to understand the scientific fields that the foreign nationals work in, and pressing work loads that limit the time available to analyze the facts.

After earning a bachelors and masters degree in geography in China, as well as working in industry in that country, Dr. Yuelin decided to pursue his doctorate in the US at the University of Wisconsin. He made this decision because he wanted to pursue a career in research and he believed that there would be greater opportunity to do this in the US, where there is greater investment in scientific research. While there are employment opportunities for Dr. Yuelin in China, he felt that these opportunities would involve implementing and applying scientific

discoveries rather than actually making those discoveries and advancing the body of knowledge in his field. Dr. Yuelin's desire was to have the broadest possible intellectual life and he felt that having gained industry experience in China, pursuing research and scientific discovery in the US would be the best way to achieve his goal. It bears mentioning that Dr. Yuelin was also drawn to the U.S. by a sense of adventure and curiosity. While he could have pursued his Doctorate in Europe, he wanted to experience life in the US and learn about American culture.

The position that he accepted with the US university employer is ideal because it affords him not only the opportunity to conduct original research that will advance the body of knowledge in the GIS field, but also the opportunity to spread that knowledge through teaching. Dr. Yuelin's enthusiasm for his work has made him an outstanding professor as well as researcher; students consistently rank him as a top faculty member, and enrollment in the courses that he teaches has doubled since he was hired.

When Dr. Yuelin declined the recent Chinese job offer, he knew that he was taking a risk given his immigration situation. He gave serious consideration to accepting it and returning to his family and friends in China. But he was pulled by the new life that he has begun in the U.S., a life that includes many caring friends and colleagues that have so strongly supported him through his immigration-related woes.

Alamgir Hashmi

Alamgir Hashmi has been employed by a large urban university since the early 1990s. He is a scientist who has served as a Research Associate, a Research Team Leader, and an Acting Principle Investigator in the lab that he works for. His academic field is Optics and Laser Spectroscopy. Dr. Hashmi's employer filed for a green card on his behalf as an Outstanding Researcher. The Outstanding Researcher petition was approved quickly.

Unfortunately, he was not so lucky with the petition filed with USCIS to adjust his status from H-1B visa holder to Lawful Permanent Resident (green card). About a year after the petition was filed, USCIS issued a Request For Further Evidence, seeking proof that he had remained in valid nonimmigrant status from the time that he first entered the US in 1990. This request was made notwithstanding the fact that this evidence was submitted with the initial filing in the case. Another year has passed and Dr. Hashmi still has not heard a word for USCIS.

Numerous status inquiries have been made on his behalf, but they have not served to speed up adjudication. When a status inquiry is made with USCIS, the attorney or petitioner making the inquiry does not get the opportunity to speak with a person knowledgeable about the case. Rather, they speak to a clerical employee (or USCIS contractor) that records the inquiry and issues an inquiry number for the caller's reference. Once such a request has been made, another request is not permitted until 45 days has passed- at that point the attorney or petitioner is permitted to make the same kind of inquiry and wait another 45 days. If repeated inquiries do not resolve the case, the only option available to the foreign national is to file a mandamus action (an action that forces an agency to perform its statutory duties) in federal court. Mandamus actions usually get results, but they are very costly to undertake. Accordingly, Dr. Hashmi is in immigration limbo. This limbo is problematic in Dr. Hashmi's case. While he has been issued travel documents, he fears that travel could result in a denial of admission upon return to the US. For this reason, Dr. Hashmi has not seen his parents at all in the past decade, a fact that troubles him greatly given their advanced age.

Dr. Hashmi came to the US from his native Pakistan in 1982, when he was 21 years old. He did so in order to pursue his college education, which had been interrupted in Pakistan due to government shut-down of the state operated university system. He enrolled in the Bachelor of Science program at the university where he is now employed. It was his father who encouraged him to study in the US, hoping that his son's life would be easier than his own. The elder Hashmi was a refugee in Pakistan, having fled to that country after the British left India. He worked as a door-to-door salesman, earning very little money. Nevertheless, he managed to scrape together enough to send Dr. Hashmi to college in the US.

Motivated by a desire to help his father to educate his four siblings, Dr. Hashmi graduated from college and went on to earn his Masters degree and PhD in Physics. After earning his PhD, Dr. Hashmi was offered a research job in the same university lab that he now works for; it paid enough to finally permit him to assist his family financially. Over the years, Dr. Hashmi's work in this lab, a leading optics and spectroscopy lab, has led to discoveries that have gained him

international recognition as an outstanding scientist. Like Dr. Yuelin, Dr. Hashmi's Curriculum Vitae boasts of numerous published articles, presentations at international symposia, articles written about his work by other scientists, and patents awarded for his discoveries.

After spending more his entire adult life in the US, Dr. Hashmi does not feel that he could return to Pakistan. His ability to communicate in Arabic has diminished significantly, the Pakistani culture is no longer familiar to him, and he has no professional connections in a country where professional connections are necessary to secure employment. Moreover, opportunities in the sciences are far and few between in Pakistan. Accordingly, like so many highly educated immigrants, he patiently awaits a USCIS decision with his life on hold.

Natalie Roberts

Natalie Roberts has appeared on CNN as an expert on African Art on several occasions. And an expert she is, having published widely on the subject in respected art publications, having held high level positions at national museums, and having won several national and international awards for her work. Yet her path to a green card was anything but easy.

Dr. Roberts came to the US sixteen years ago, becoming a student not long after she arrived. She wanted to study art, but her native Trinidad and Tobago did not offer courses of study in art on the college level. She had considered studying in Paris, but happenstance pushed her to the US. She was working in a library in Trinidad when she met another young Trinidadian who was an artist; the two became fast friends. The friend, who had spent time studying in New York City, decided to marry her US citizen boyfriend in New York. She asked Dr. Roberts to accompany her to New York to serve as a witness to the marriage, and Dr. Roberts agreed. During the trip Dr. Roberts fell in love with everything New York- the people, the food, and most of all, the art.

Dr. Roberts's great aunt, a New York City resident, suggested that she apply to New York City colleges. She did so, and was accepted. She earned a Bachelors in Art History and accepted a job with a museum, coordinating an art education program. While working full time she went on to earn a Masters and PhD, also in Art History. Through these years she worked in her field, earned awards, and made a name for herself as an African art expert.

Dr. Roberts eventually decided to stay in the US as a Lawful Permanent Resident; she wanted to continue with the career that she found so rewarding. When she first applied for a green card, she did so as an alien of extraordinary ability in the arts. It made sense to apply in this category given her achievements in the field as well as the fact that USCIS had already granted her an O visa (temporary) based on her outstanding ability in the arts. Notwithstanding this, nearly two years later, USCIS denied her petition. While the decision was a shock because it seemed inconsistent with other USCIS decisions regarding aliens of extraordinary ability, Dr. Roberts chose not to appeal. An appeal would be costly, might not be successful, and would further delay the possibility of getting a green card.

Instead, Dr. Roberts decided to file a new petition as an advanced degree professional (a lesser immigration category). This avenue required the attainment of a labor certification from the US Department of Labor (DOL), a process whereby Dr. Roberts's employer (now a university operated art education program) would have to prove that it had recruited for the position and was unable to find minimally qualified US workers. While few labor certification applications are decided quickly, Dr. Roberts's case was particularly slow because it was the subject of an audit (approximately 30% of all cases are now being audited). The audit required the employer to show the DOL that it has properly recruited for the position, and that the job truly required a least a Masters degree. After the employer responded to the audit it took the DOL 16 months to finally approve the case.

With an approved labor certification in hand, Dr. Roberts was able to again petition USCIS for a green card, which was granted. All in all, Dr. Roberts's journey to a green card took about 6 years and cost, between USCIS filing fees and attorney's fees, in excess of \$14,000.

Mohsen Makhmalbaf

Mohsen Makhmalbaf was a 20 year old Iranian ready for college. But he also wanted to leave Iran, where jobs were scarce. And he was in search of an adventure. He was not sure about what he wanted to study, but he knew that schools in the US were recruiting internationally for students interested in the sciences, technology, engineering or math. He chose engineering because, in Iran, this is a respected field. He found an affordable public university in New York City that was

eager to have him, and enrolled as an international student. After a decade of studying in the US, he had earned his Bachelors, Masters and PhD in Civil Engineering.

Having completed his education, Dr. Makhmalbaf had no interest in returning to his native Iran. He had come to regard New York City as a "beautiful" place for its rich cultural and ethnic diversity. In Iran, he felt, he would be limited to interacting with only Iranians, a life that he now considered isolating. He also had a desire to pursue research and he believed that, given the level of funding that goes into research in the US, his chances of finding a job in the US would be much higher than in Iran.

A few years after earning his PhD, Dr. Makhmalbaf landed a job as a Research Associate for a large university in its remote sensing center. Remote sensing is the ability to detect and identify gases that we cannot see. It has both military and civilian applications that are critical to the US. The civilian applications included the detection of atmospheric pollution, Greenhouse gases, and toxic industrial gases; this ties into monitoring the environment and studying climate change. The military applications include remote detection of explosives and chemical and biological threats, as well as systems designed to protect military aircraft from heat seeking missiles by deactivating their guidance mechanisms. As a Research Associate, Dr. Makhmalbaf conducts research, prepares articles for publication, and makes presentations at international symposia.

Given the nature of his chosen field, and its importance to our nation, as well as his published articles and presentations, Dr. Makhmalbaf filed a National Interest Waiver petition. This category of immigration permits the waiver of the labor certification requirement on the grounds that the alien's service is in the national interest. More than a year passed before CIS took any action on Dr. Makhmalbaf's case. When it did take action, it was to issue an RFE (Request for Further Evidence) on the issue of whether other scientists had cited Dr. Makhmalbaf's work in their own work. Because his work had been cited on numerous occasions, he was able to submit the requested evidence to USCIS. Over a year passed without any further word from CIS.

Frustrated, and concerned about running out of the permitted 6 years in H-1B status (nonimmigrant status for professional employees), Dr. Makhmalbaf decided to seek his green card through the labor certification process (as an advanced degree professional). By this time, however, the economy was in a recession and the labor certification process had slowed down dramatically. It took 2 years for the university employer to finally obtain an approved labor certification on Dr. Makhmalbaf's behalf. Two weeks later, USCIS unexpectedly approved Dr. Makhmalbaf's original National Interest Waiver filing. Dr. Makhmalbaf finally had his green card after spending thousands of dollars and waiting a little over 4 years.

Navin Chandra

Navin Chandra grew up in India in meager conditions at best. His aunt, a lawful permanent resident in the US, made annual visits to India each summer, staying with Mr. Chandra and his family. During these visits, she spoke of the US with great pride and admiration. Mr. Chandra's imagination embraced the US as a land of immigrants, where anyone willing to work hard could achieve success. Mr. Chandra began to set his sights on the US as a way to improve his life; he dreamed of studying and working in the US.

In 1997 Mr. Chandra took his first steps towards fulfilling that dream. He was accepted into a graduate program at a large university in New York City. Of course, paying his way would not be easy. Mr. Chandra and his parents had saved only enough money for his airfare to the US and his first semester's expenses. He knew that he was financially on his own after that. Mr. Chandra poured himself into his studies, earning top grades. As a result, he was awarded scholarships. Between the scholarships and his part time work on campus, he was able to stay in school, eventually earning a Masters in Human Resources Administration and a Masters in Business Administration in Computer Science.

After graduation, Mr. Chandra was offered a job as a Systems Analyst. Being so close to achieving success in the US, he did not want to return to India. In his new job Mr. Chandra earned enough to finally support his parents back home. And he had come to feel a part of US culture; he did not want to give that up.

Over the years, Mr. Chandra was promoted several times. Given his value to his employer, the employer agreed to sponsor him for his green card. But his experience with our immigration system has been anything but smooth. In 2005 the labor certification filed on his behalf by his employer was approved. Accordingly, he filed an I-140 Petition for an Alien Work. This was

approved in 2006. At that point, being from India, he was unable to file an I-485 Application to Adjust Status on account of the per country limitations on the number of available visas; in other words, he was "retrogressed" or stuck in the backlog.

During a brief window period in July of 2007, retrogressed foreign national were permitted to file Adjustment of Status application. Mr. Chandra took advantage of this window and filed an application. Two years later, in July of 2009, the case was erroneously denied by CIS on the ground that he had filed his application just prior to the July 1 opening of the window. This decision was appealed because Mr. Chandra had the Federal Express receipt showing the CIS received his petition on July 2. This appeal is still pending.

At the same time that the Adjustment of Status application was denied, Mr. Chandra's H-1B period of stay in the US was coming to an end. In accordance with the law, which permits retrogressed foreign nationals to extend their H-1B time, Mr. Chandra's employer requested an extension of his H-1B status. This request was denied on the ground that the previous filed Adjustment of Status application had been denied. The employer appealed this decision, and that appeal is pending.

As it stands now, Mr. Chandra has two appeals pending and his immigration status in the US is uncertain. In fact, his whole future in the US is uncertain. And the reason for the uncertainty all goes back to backlogs in the system and a clearly erroneous decision made by CIS.

As these stories demonstrate, America continues to present the promise of a better life, financially and professionally, to people in other parts of the world. The influx of immigrants willing to work for a better life, as well as share their talents, is ingrained in our national identity and has made us the strong, tolerant nation we are today. It is truly heart warming that newcomers to America also come to fall in love their new home, in part because of the richness of its cultural diversity. Our immigration policies are on target, but the administration machinery must be improved so that the goals of our policies are met. This will not only benefit those who courageously come here to make a new life, but also our nation.

About The Author

[Victoria Donoghue](#) received her J.D. from St. John's University School of Law in 1992, after having received a Masters of Science in Industrial and Labor Relations from Cornell University in 1989. From 2003-2007 Ms. Donoghue was the Assistant Director of Human Resources at the Research Foundation of the City University of New York, a 5000 employee nonprofit corporation that administers the \$360 million in research grants that flow through the City University system each year. In that capacity, she oversaw the Foundation's immigration program, supervising the processing of nonimmigrant visas and serving as a resource both to the Foundation's foreign national employees and to outside counsel in petitions for permanent residence. In addition, she regularly delivered presentations to colleges throughout the CUNY system about immigration matters and is a member of the American Immigration Lawyers Association. In 2007 Ms. Donoghue entered private practice as an immigration attorney, becoming Of Counsel to the law firm of Nachman & Associates. Since then she has taught and published widely on a variety of immigration related issues. She is currently an Adjunct Professor in the Immigration Law Program in CUNY's School of Professional Studies. She has given presentations at the 2008 NAFSA Annual Conference, Fairleigh Dickenson University, Vassar College, Hunter College, City College, New Jersey Institute of Technology, the National Business Institute, and the University of Medicine and Dentistry of New Jersey, among others. Her publications include a chapter in The PERM Book, 2008-2009 Edition and a chapter article entitled "A Program to Promote Scientific Research at the City University of New York" to be published in NAFSA's International Students: Strengthening a Critical Resource, due out in 2009.