

THE NATIONAL INTEREST WAIVER PROGRAM: GETTING THE GREEN CARD WITHOUT A LABOR CERTIFICATION.

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In instances where the interest of the United States is being served, aliens can seek a National Interest Waiver. The National Interest Waiver classification is a waiver of the Labor Certification Application (PERM) requirement which is a costly and time consuming way to get the green card. The Labor Certification Application process (PER) requires a U.S. employer to apply to the U.S. Department of Labor for a "Labor Certification" to demonstrate that there are no able, willing and qualified U.S. workers who can take the job.

On the other hand, the National Interest Waiver classification is an EB-2 category (Employment-Based Immigration - Second Preference). The National Interest Waiver does not require an employer to sponsor the application. What distinguishes an EB-2 from an EB-2 with a National Interest Waiver is that the latter does not require proof of a job offer but rather the potential for a future job. However, it continues to be our practice that, if a National Interest Waiver Application is sponsored by an employer, the case tends to be stronger. Thus, we always try to encourage the potential National Interest Waiver beneficiaries to garner as much support as possible for the employer in connection with the preparation of the paperwork.

The National Interest Waiver application is a green card visa classification that may be of particular interest to scientists, researchers, engineers, teachers, business executives or other highly-skilled professionals seeking to immigrate to the U.S. because many of the potential National Interest Waiver beneficiaries do not have employer sponsorship. These persons have tremendous upside potential for research and for obtaining grants and government funding for exploring original scientific contributions to an academic field. The fact that the National Interest Waiver application is an EB-2 classification is important if the prospective beneficiary is from China or India or one of the other retrogressed countries specified in the Visa Bulletin. It has the potential to speed a case along rather than languishing.

According to the USCIS (United States Citizenship and Immigration Services), the jobs that may qualify for a National Interest Waiver are not defined by statute or by the regulations. Rather, National Interest Waivers are usually granted to those who have "exceptional ability" in their field of work and whose employment in the U.S. would greatly benefit the nation. Those seeking a National Interest Waiver may self-petition, which means that they do not need an employer to sponsor

them. They will be filing the Labor Certification directly with the USCIS along with their Form I-140, Petition for Alien Worker.

Some of the evidence that can and should be included in the national Interest Waiver include (but is not limited to): (1) An official academic record showing that you have a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning related to your area of exceptional ability; and (2) Letters documenting at least ten (10) years of full-time experience in your occupation; and (3) a license to practice your profession or certification for your profession or occupation; (4) Evidence that you have commanded a salary or other remuneration for services that demonstrates your exceptional ability; and (5) Membership in a professional association; and (6) Recognition for achievements and significant contributions in your industry or field by your peers, government entities, professional or business organizations. Of course, any other comparable evidence of eligibility is also acceptable.

If you are a highly-skilled professional in areas such as the arts, sciences, or business and you can show that you have “exceptional abilities” and that your presence in the U.S. has the potential to significantly benefit the economic, cultural or educational interests of the U.S., you may be qualified to apply for the EB-2 National Interest Waiver visa classification without a current employment sponsorship and without having to prove that there are no able, willing and qualified U.S. workers using the PERM Labor Certification process. Essentially, the USCIS seems to feel that if you are worthy of a National Interest Waiver, the Nation’s interest in the Labor Certification process (for your case) is outweighed by the benefit of the value that you (and your employer, if relevant) will bring to the Nation as a whole.

In addition to the foregoing, the USCIS will judge if your case has “substantial intrinsic merit” and how your skills and abilities and work will benefit the U.S. as a whole. What essentially this means is that you must not only meet the criteria for an EB-2 (listed above) but you and your intended work in the U.S. must display incomparable appeal. Not every case is worthy of consideration for submission as a National Interest Waiver case. However, for those individuals who possess very impressive academic and experiential experiences and who are doing work that (it may be argued) is or will benefit the Nation as a whole, there may be a good route to get to the green card in a shorter time than it may take in the Employment-based third (3rd) Preference Category (which may Take many many years).

For more information about the National Interest Waiver Visa classification, please feel free to contact the immigration and nationality lawyers at the NPZ Law Group at 201-670-0006 (x100) or by e-mailing us at info@visaserve.com.