



## **EB2 Entrepreneurs - National Interest Waiver (NIW)**

*By Tahmina Watson, Attorney, Watson Immigration Law*

*The USCIS, in line with current government policy, issued new regulations to work within the current law to help boost the economy by way of allowing entrepreneurs the option to apply for green cards.*

Under the Immigration and Nationality Act Section (INA) 203(b)(2), those aliens who are members of a profession holding an advanced degree or of exceptional ability may apply for legal permanent residence or green cards under the employment-based second preference, or EB2, as it is commonly known.

Under the EB2 preference, one can fall under the general category (INA §203(b)(2)(A)) and their employers would have to file a Permanent Labor Certification proving that no other American worker was found to fill the position and that there is a job offer for the alien. Alternatively, one can fall under INA §203(b)(2)(A) which allows a waiver of the job offer based on national interest. In other words, if the job will benefit national interest, the requirements that the alien's services must be sought by the employer will be waived. This is called National Interest Waiver (NIW).

Until recently, those who would qualify under NIW did not specifically include entrepreneurs. However, to mark the six month anniversary of Start-Up America, a White House led initiative to help America's job creating entrepreneurs, EB2 NIW now includes entrepreneurs specifically.

The USCIS states that entrepreneurs may qualify for NIW if they can demonstrate their business endeavors will be in the interest of the United States. To prove their business will benefit the U.S., the NIW entrepreneur must:

1. Seek employment in an area that has intrinsic merit;
2. Demonstrate that the proposed benefit provided will be national in scope;
3. Demonstrate that the entrepreneur will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualification.

The government is essentially giving the opportunity to entrepreneurs to create new jobs within the country. This is great news for start-up companies and entrepreneurs. This is also a significant step in helping the economy.



While this is great news for citizens of most countries, unfortunately, citizens of India and China, people that I assist regularly, will not be able to easily benefit from this because the visa wait times for EB2 is long and frustrating. Currently, Indian citizens must wait about five years for a visa to be current in this category.

It is far too soon to predict how the legal framework will evolve in this area and how cases will be adjudicated. Nevertheless, this is an exciting and welcome development in immigration law.

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Tahmina Watson is the founder of Watson Immigration Law based in downtown Seattle. She was a practicing barrister in London, UK, before immigrating to the United States herself. Tahmina has been practicing US Immigration and Naturalization law since 2006. More information about her can be found at [www.immigrationseattle.com](http://www.immigrationseattle.com) or [www.watsonimmigrationlaw.com](http://www.watsonimmigrationlaw.com). She can be contacted directly at 206-856-3808 or email her at [tahmina@watsonimmigrationlaw.com](mailto:tahmina@watsonimmigrationlaw.com).