

The cover features a stylized American flag graphic. The top-left portion shows a blue field with white stars, while the rest of the cover is a solid red field. A white diagonal line separates the two sections. The text is positioned on the red background.

EB2-NIW

Complete Guide

Ramon Rocha

EB2-NIW

Complete Guide

Work-Based Visa

Ramon Rocha

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3rd Edition (English)

Summary

About the Author

Foreword

Legal Notice

Chapter 1: Introduction to the EB-2 NIW Visa

Section 1.1: What is the EB-2 NIW Visa?

Section 1.2: Purpose of the EB-2 NIW Visa

Section 1.3: Benefits of the EB-2 NIW

Section 1.4: The Role of the National Interest

Section 1.5: What does the USCIS manual say?

A. Advanced Degree Professionals

1. Eligibility

2. Equivalent Foreign Degrees

3. Advanced Degree Position

B. Exceptional Ability

1. Eligibility

2. Evidence

Final Determination of Merit

3. Schedule A Permanent Work Certification, Group II

C. Professional Athletes

1. Eligibility

2. Evidence

D. Exemption from Job Offer for National Interest

1. Overview of the Three "Prongs" (Criteria)

2. Specific Evidence Considerations for People with a Master's or PhD in Science, Technology, Engineering, or Mathematics (STEM)

3. The Role of Interested Government Agencies or Quasi-Governmental Entities

4. Specific considerations for entrepreneurs

Section 1.6: Key Updates to USCIS Policy for EB-2 NIW

Chapter 2: Eligibility Criteria

1. Demonstrating Exceptional Skill
2. Proving National Interest
3. Educational and Professional Training
4. Significant Contributions in the Field of Activity
5. Support from Experts in the Field
6. Opportunities to Continue Operating in the U.S.
7. Impact on US National Interests
8. Proof of Professional Experience and Achievements
9. Relevance of Studies and Training
10. Comparison with Professionals in the Same Area
12. Preparation of Solid Documentation
13. Involvement in 'Endeavor' or Entrepreneurship Activities
14. Foundation or Participation in Companies
15. Economic and Employment Impact
16. Recognition and Awards in the Business World
17. Innovation and Contribution to the Community
18. Future Outlook and Continuation of 'Endeavor'
19. Artists and the EB-2 NIW
20. Scholars and Researchers in EB-2 NIW

Chapter 3: Preparing Your Petition

Section 3.1: REVIEW OF ELIGIBILITY CRITERIA

1. Demonstration of Exceptional Skill:
2. Proof of National Interest:
3. Educational and Professional Background:
4. Specific Cases and Adaptation:

Section 3.2: COLLECTION OF SUPPORTING DOCUMENTATION

1. Identification of Relevant Documents:
2. Organization and Cataloguing:
3. Translation and Authentication:
4. Letters of Support and References:
5. Additional Specific Documents:
6. Complete Review:

Section 3.3: CREATING A PROFESSIONAL PLAN OR BUSINESS PLAN

Professional Plan:

Preparing a Business Plan for EB-2 NIW

Drafting a Professional Plan for the EB-2 NIW

Section 3.4: PREPARATION OF LETTERS OF SUPPORT AND RECOMMENDATION

Identifying Suitable Senders:

Communicating EB-2 NIW Criteria:

Detailed Guidance for Senders:

Perspectives on Exceptional Ability:

Solid Argument for the National Interest:

Early Collection and Coordination:

Section 3.5: ORGANIZATION AND REVIEW OF DOCUMENTATION

1. Initial Organization:
2. Requirements Verification:
3. Checklist:
4. Content Review:
5. Consistency in Letters of Support:
6. Protection of Personal Data:
7. Third-Party Review:
8. Backup of Documents:
9. Deadlines and Delivery:
10. Physical and Digital Organization:

11. List of Attached Documents:

Section 3.6: LEGAL REVIEW OF THE PETITION

Chapter 4: Practical Aspects

Validation of Diplomas

Academic Evaluation (Equivalency of Degrees)

Differences Between Academic Evaluation and Diploma Validation

Expert Opinion Letters

Letters of Recommendation

Business Plan

Professional Plan

Market Analysis

Final Thoughts

Chapter 5: Pathways to Permanent Residency

5.1. Adjustment of Status

Process Flow

Mandatory Medical Examination

Processing Times

Employment Authorization (EAD) and Advanced Parole (AP)

Advantages of Adjustment of Status

Disadvantages of Adjustment of Status

5.2. Consular PROCESS

Process Flow

Mandatory Medical Examination

Processing Times

Advantages of the Consular Process

Disadvantages of the Consular Process

5.3: Visa X Admission Class x Immigration Status

1. Visa

2. Admission Class

3. Immigration Status

Change and Adjustment of Status Requests

Adjustment of Status

5.4. CSPA for Employment-based Immigrant Visas (EB)

5.5: Visa Bulletin and Priority Date

1. Visa Bulletin:

Table A – Final Action Dates

Table B – Dates For Filing

2. Priority Date:

5.6: Processing Fees and Associated Costs

How to Pay USCIS Filing Fees

If you live outside of the United States or its territories

If you are in the United States

Pay by check

Pay with Money Order

Pay with a credit or debit card

If you file online

If you file by mail

Chapter 6: Immigration Petition (I-140)

Header

Part 1: Information About the Person or Organization Filing This Petition

Part 2: Petition Type

Part 2: Petition Type (continued)

Part 3: Information About the Person for Whom You Are Filing

Part 4: Processing Information

Part 4: Processing Information (continued)

Part 5: Additional Information About the Petitioner

Part 5. Additional Information About the Petitioner (continued)

Part 6. Basic Information About the Proposed Employment

Part 7. Information About the Spouse and All Children of the Person for Whom You Are Filing

Part 7. Information About the Spouse and All Children of the Person for Whom You Are Filing (continued)

Part 8. Contact Information, Certification, and Signature of the Petitioner or Authorized Signatory and Signature

Part 9. Interpreter's Contact Information, Certification, and Signature

Part 10. Contact Information, Certification, and Signature of the Person Preparing this Petition, if Other Than the Petitioner or Authorized Signatory

Part 11. Additional Information

Chapter 7: Application for Permanent Residence Registration or Adjustment of Status (I-485)

Header

Part 1. Information About You (Person applying for lawful permanent residence)

Part 1. Information About You (Person applying for lawful permanent residence) (continued)

Part 1. Information About You (Person applying for lawful permanent residence) (continued)

Part 1. Information About You (Person applying for lawful permanent residence) (continued)

Part 2. Application Type or Filing Category

Part 2. Application Type or Filing Category (continued)

Part 2. Application Type or Filing Category (continued)

Part 3. Request for Exemption for Intending Immigrant's Affidavit of Support Under Section 213A of the INA

Part 4. Additional Information About You

Part 4. Additional Information About You (continued)

Part 5. Information About Your Parents

Part 5. Information About Your Parents (continued)

Part 6. Information About Your Marital History

Part 6. Information About Your Marital History (continued)

Part 7. Information About Your Children

Part 8. Biographic Information

Part 9. General Eligibility and Inadmissibility Grounds

Part 9. General Eligibility and Inadmissibility Grounds(continued)

Part 9. General Eligibility and Inadmissibility Grounds(continued)

Part 9. General Eligibility and Inadmissibility Grounds(continued)

Part 9. General Eligibility and Inadmissibility Grounds(continued)

Part 9. General Eligibility and Inadmissibility Grounds(continued)

Part 9. General Eligibility and Inadmissibility Grounds(continued)

Part 10. Applicant's Contact Information, Certification, and Signature

Part 11. Interpreter's Contact Information, Certification, and Signature

Part 12. Contact Information, Certification, and Signature of the Person
Preparing this Application, if Other Than the Applicant

Part 13. Signature at Interview

Part 14. Additional Information

Mandatory Initial Evidence Checklist for Employment-Based Form I-485
Applicants

Chapter 8: Work Authorization (I-765)

Header

Part 1. Reason for Applying

Part 2. Information About You

Part 2. Information About You (continued)

Part 2. Information About You (continued)

Part 3. Applicant's Statement, Contact Information, Declaration,
Certification, and Signature

Part 4. Interpreter's Contact Information, Certification, and Signature

Part 5. Contact Information, Declaration, and Signature of the Person
Preparing this Application, if Other Than the Applicant

Part 5. Contact Information, Declaration, and Signature of the Person Preparing this Application, if Other Than the Applicant (continued)

Part 6. Additional Information

Chapter 9: Travel Authorization (I-131)

Header

Part 1. Application Type

Part 1. Application Type (continued)

Part 1. Application Type (continued)

Part 1. Application Type (continued)

Part 2. Information About You

Part 2. Information About You (continued)

Part 2. Information About You (continued)

Part 2. Information About You (continued)

Part 3. Biographic Information of the Person Who Will Receive the Travel Document, Parole Document, or Arrival/Departure Record

Part 4. Processing Information

Part 4. Processing Information (continued)

Part 4. Processing Information (continued)

Part 5. Complete Only If Applying for a Reentry Permit (Part 1., Item Number 1.)

Part 6. Complete Only If Applying for a Refugee Travel Document (Part 1., Item Number 2. or 3.)

Part 6. Complete Only If Applying for a Refugee Travel Document (Part 1., Item Number 2. or 3.) (continued)

Part 7. Information About Your Proposed Travel (Complete only if you are applying for an Advance Parole Document (Part 1., Item Number 5.))

Part 8. Complete Only If Applying for an Initial Parole Document, Parole In Place, or Re-parole (Part 1., Item Numbers 6. - 11.)

Part 9. Employment Authorization For New Period of Parole (Re-parole) (Part 1., Item Number 10. or 11.)

Part 10. Applicant's Contact Information, Certification, and Signature (Read the information on penalties and travel warnings in the form Instructions before completing this Part 10.)

Part 11. Interpreter's Contact Information, Certification, and Signature (if applicable) (If no interpreter was used, skip to Part 12.)

Part 12. Contact Information, Certification, and Signature of the Person Preparing this Application, if Other Than the Applicant

Part 13. Additional Information

Chapter 10: Immigrant Visa Application (DS-260)

Sign In

Summary Information

Getting Started

Personal Information 1

Personal Information 2

Present and Previous Address Information

Mailing and Permanent Address Information

Family Information: Parents

Family Information: Spouse

Family Information: Previous Spouse

Family Information: Children

Previous U.S. Travel Information

Present Work/Education/Training Information

Previous Work/Education/Training Information

Additional Work/Education/Training Information

Petitioner Information

Security and Background: Medical and Health Information

Security and Background: Criminal Information

Security and Background: Security Information 1

Security and Background: Security Information 2

Security and Background: Immigration Law Violations Information 1

Security and Background: Immigration Law Violations Information 2

Security and Background: Miscellaneous Information 1

Security and Background: Miscellaneous Information 2

Social Security Number Information

Sign and Submit

E-Signature

Submitting Supporting Documentation

Required Documentation

Additional Information

After the Interview

Chapter 11: Form ETA-9089 (Application for Permanent Employment Certification)

Why include Labor Certification forms in your application?

How to access and fill out the form

Understanding Form ETA-9089

The purpose of Form ETA-9089

Form ETA-9089

Appendix A

B. Foreign Worker Education (continued)

Final Determination

Chapter 12: Questions & Answers

Chapter 13: Final Message

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About the Author



With a trajectory marked by diverse and enriching experiences, I bring with me a baggage that reflects not only my academic background, but also my worldview and the way I face challenges. Graduated in Systems Analysis from Mackenzie University, in São Paulo, in 2000, I sought to broaden my horizons with a postgraduate degree in Professional MBA in Systems Engineering, complemented by studies in Business and

Marketing in the United States.

My journey in the USA began in 2018, when I decided to explore the opportunities and cultural richness of this country. This transformative experience led me to change my status from tourist to F-1 student, immersing myself intensely in learning the language and understanding the local culture.

Before that, in Brazil, I had the privilege of working as a journalist and editor of a website specializing in covering events. This experience not only refined my communication skills but also sparked in me a passion for writing. At the same time, I built a solid career in the technology area, working in renowned companies in the states of São Paulo and Minas Gerais, where I worked as a specialist and contributed with my technical knowledge.

As an administrator, I faced varied challenges, always guided by a commitment to excellence. I am driven by constructive perfectionism and I deeply believe that knowledge only has value when shared. It is this belief that inspires me to leave a significant legacy for generations to come.

With this vision in mind, I present this guide as a reflection of my trajectory and my desire to help others navigate the complex process of legalization in the United States through work visas. I hope this material is a useful and enlightening source for anyone looking to turn dreams into reality in this country full of possibilities.

Foreword

Dear reader,

It is with great enthusiasm that I share this detailed guide on the EB2- NIW (National Interest Waiver) visa process. Throughout my own immigration journey within the USA, I have lived with several situations where they required a lot of persistence, resilience, patience and overcoming. An immigration process is usually never simple or easy and requires that the petitioner, preferably, have as much knowledge as possible about the process he intends to send to U.S. immigration. And it was precisely the difficulty of finding consistent, complete and quality information that I put the pieces together and the result I present here.

This guide is designed with the goal of being a reliable compass for those seeking not only permanent residency in the United States, but also an opportunity to contribute meaningfully to the country. From eligibility criteria to the crucial decision between adjustment of status and consular process, each page is dedicated to answering questions and providing practical guidance.

I understand that immigration is a unique journey for each individual, which is why this guide is not just a set of information, but a personalized tool to assist you at each step. I urge you to explore its pages, absorb the shared knowledge and, as always advise, seek the guidance of qualified professionals, either for consulting/mentoring or to be the preparing agent of your petition.

The journey through EB-2 NIW is challenging, but I firmly believe that with proper knowledge and assistance, as long as you meet the necessary requirements, it is an achievable goal. This guide is my contribution to making this path clearer and more accessible.

I wish you success in your quest for permanent residency in the United States. May this guide be a valuable source of information and support throughout your journey.

With best wishes,

Ramon Rocha

Legal Notice

The author of this guide is not an immigration attorney and does not offer legal advice. All content in this book is intended only to provide general guidance on the EB2 visa process and should not be construed as legal advice specific to individual situations.

Readers are advised to use this guide as a resource for understanding the EB2 immigration process and to assist in preparing their own petitions or reviewing processes made by third parties. However, if you have any questions or needs that are not clear in this guide, or if you need any legal advice specific to your situation, it is recommended to consult with a licensed immigration attorney in the United States.

This guide does not establish an attorney-client relationship between the author and the reader, and the author assumes no responsibility for any loss or damage resulting from the use of this guide or reliance on its contents.

Chapter 1: Introduction to the EB-2 NIW Visa

Welcome to the first chapter of our eBook "EB-2 NIW – Complete Guide". In this introductory chapter, we will dive into the world of the EB-2 NIW visa, understand its purpose, and highlight the benefits it offers.

SECTION 1.1: WHAT IS THE EB-2 NIW VISA?

The EB-2 NIW Visa, or Employment-Based Second Preference, National Interest Waiver, is a category of immigrant visa in the United States that allows foreign professionals to obtain permanent residency (Green Card) without the need for a specific employer sponsor or prior job offer. In other words, EB-2 NIW applicants can self-petition based on their own exceptional abilities and significant contributions to the national interest of the United States.

The EB-2 NIW is a special category of immigration visa that has its roots in the need to attract and retain highly skilled professionals and outstanding entrepreneurs. Created to promote the economic, scientific and technological development of the country, this visa is designed for those who demonstrate exceptional skills in their respective areas of expertise and whose presence in the U.S. is considered to be of national interest.

Over time, understanding the valuable contribution that highly skilled professionals and entrepreneurs can make to the United States has led to the evolution of the EB-2 NIW. Initially, the focus was on exceptional abilities in academic and scientific fields. However, as the global economy developed and innovation became a key player, the need to adapt the eligibility criteria to also include entrepreneurs and their endeavor or entrepreneurship activities was recognized.

The inclusion of the National Interest Waiver category expanded opportunities for individuals who, in addition to exceptional abilities, wished to contribute to the economic growth of the United States

through innovative ventures. This advancement has allowed talented professionals and entrepreneurs to envision a more affordable path to carry out their projects and contributions in the U.S., bringing benefits not only to themselves but also to the American economy and society as a whole.

Main Aspects of the EB-2 NIW Visa:

1. **Qualification Based on Exceptional Abilities:** To qualify for the EB-2 NIW, applicants must demonstrate exceptional abilities in their field, which may include the sciences, arts, education, business or other professions. This is usually proven through awards, publications, patents, citations in academic papers, peer recognition and other relevant evidence.
2. **Contribution to the National Interest:** In addition to exceptional abilities, candidates must show how their accomplishments and work benefit the national interest of the United States. This may involve contributions to scientific, economic, cultural, educational or other advances that have a substantial impact on the country.
3. **Labor Certification Exemption:** One of the main advantages of the EB-2 NIW is that applicants do not need an employer to sponsor them or a Labor Certification from the U.S. Department of Labor. This eliminates the need to prove that there are no American workers available for the position.
4. **Application Process:** The EB-2 NIW application process involves submitting a petition to the U.S. Citizenship and Immigration Services (USCIS). Applicants must prepare solid documentation and a compelling narrative that highlights their accomplishments, skills and contributions to the national interest.
5. **Approval and Green Card:** If the EB-2 NIW petition is approved, the applicant will receive a US Permanent Resident Green Card. This grants the right to live and work indefinitely in the USA.

It is important to note that the process of obtaining the EB-2 NIW can be complex and competitive, as many highly qualified candidates apply for this visa. Therefore, it is advisable to seek the guidance of an experienced immigration attorney to ensure that your petition is well prepared and has the best chance of success. The EB-2 NIW offers a valuable opportunity for talented and innovative professionals to contribute to the United States and obtain permanent residence independently.

SECTION 1.2: PURPOSE OF THE EB-2 NIW VISA

The main purpose of the EB-2 NIW Visa is to allow foreign nationals with exceptional abilities in fields such as science, technology, business, medicine, education, and other areas, to obtain permanent residency in the United States. The peculiarity of the EB-2 NIW is that it allows applicants to waive the usual job offer requirement and labor certification process.

SECTION 1.3: BENEFITS OF THE EB-2 NIW

- 1. No sponsoring employer required:** Unlike many other work visas, you do not need an employer in the U.S. to sponsor your EB-2 NIW visa. This gives you more autonomy in your career and professional future.
- 2. Faster processing:** EB-2 NIW generally has faster processing compared to other EB visa categories. This can speed up your journey to permanent residency.
- 3. Possibility of self-petition:** You can apply for the EB-2 NIW on your own, which is a plus for entrepreneurs and independent professionals like you.
- 4. Gateway to Citizenship:** Once you obtain permanent resident status through the EB-2 NIW, you can eventually pursue naturalization and become a citizen of the United States.

SECTION 1.4: THE ROLE OF THE NATIONAL INTEREST

A fundamental concept in the EB-2 NIW is the "National Interest." This term refers to the idea that your skills and accomplishments should benefit the United States in a significant way. This can be achieved in a variety of areas, including scientific research, technological advancements, economic development, healthcare, education, and more.

Now that you have an overview of what the EB-2 NIW Visa is and its objectives, let's dive deeper into the eligibility criteria in the next chapter. If you're eager to learn how your career and experience fit into this visa, read on to understand how you can qualify based on your exceptional abilities and contributions to the U.S. national interest.

The Immigration Act of 1990 states that the standards for a national interest waiver in the EB-2 category are "**significantly above what is necessary to prove the potential national benefit.**" However, the law does not specifically define what counts as **National Interest**. USCIS deems it appropriate to make the application of this test as flexible as possible.

The burden of proof **will be on the foreigner** to establish that the exemption or waiver of the job offer will be in the national interest. Each case will be judged on its own merits.

The variety of cases and decisions indicates that the government requires a fairly direct benefit to the community at large before agreeing that a job is in the national interest. Factors that have been considered in successful cases include:

1. Admitting foreigners will improve the US economy.
2. The admission of foreigners will improve wages and working conditions for US workers.
3. The admission of the foreigner will provide more affordable housing for young, elderly or poor US residents.
4. The admission of foreigners will improve the US environment and lead to a more productive use of national resources.
5. The foreigner's admission is requested by the US government agency concerned.

The Administrative Appeals Office (AAO) issued a new decision - **Matter of Dhanasar**, overturning the NYSDOT decision on December 27, 2016.

In this decision, USCIS revised the analytical framework for evaluating eligibility for "national interest exemptions." The decision established that USCIS may now grant a **National Interest Waiver** if the applicant demonstrates:

1. **Substantial Merit and National Importance:** The effort proposed by the foreigner has substantial merit and national importance.
2. **Positioning to Move Forward:** The foreigner is well positioned to move forward in the proposed venture.
3. **Benefit for the US:** Overall, it would be beneficial for the United States to waive the job offer and labor certification requirements.

The merit of the venture can be demonstrated in various areas, such as business, entrepreneurship, science, technology, culture, health or education. Evidence that the venture has the potential to create a significant economic impact may be favorable, but is not required, since the merit of a venture can be established without immediate or quantifiable economic impact.

Evidence: To support the argument that a foreign national's work is of substantial merit, it is necessary to submit supporting documents explaining in simple terms why a foreign national's work is important and what the practical applications or benefits of that work are for the US. Establish that the beneficiary's proposed effort has substantial merit and consists of, but is not limited to, the following:

- a. A detailed description of the proposed venture and why it has substantial merits;
- b. Documentary evidence to support the petitioner's claims and establish the merits of the contract.

Letters of recommendation from experts in the field explaining the foreign national's research and its implications and importance for the United States are adequate evidence, in addition to any other publications or reports detailing the importance of the foreign national's effort and the benefits of such work for the United States.

The new AAO - Matter of Dhanasar decision expanded the evaluative framework to "national importance" of the applicant's effort. In determining whether a proposed effort is of national significance, USCIS considers its potential prospective impact. They evaluate prospective impact not only in geographic terms, but also in its broader implications. For example, a doctor working in a hospital may appear to be benefiting only the geographical region that the particular hospital serves.

However, the doctor can demonstrate that they are benefiting the nation as a whole through the dissemination of their research publications, or through the development of new procedures or techniques that are implemented in hospitals outside their geographical region. It is usually easy to demonstrate that most types of scientific research have benefits that are nationally important, as scientific advances in a particular area can reasonably be tied to a specific national objective, such as health or security.

Evidence that can be presented can include documentation that demonstrates that the proposed effort:

- a. It has national or even global implications within a particular field,
- b. It has significant potential to employ US workers or has other substantial positive economic effects, particularly in an economically depressed area;
- c. It will generally increase social well-being or cultural or artistic enrichment; and
- d. Impacts an issue that a government body has described as being of national importance or is the subject of national initiatives.

Evidence: The evidence presented should demonstrate the potential prospective impact of the venture. In addition to explaining how the work of a foreigner is important for the nation as a whole, other forms of evidence can provide further support for these arguments.

- **Government-related agency funding:** any instances of a foreign national's work being funded by the U.S. government can easily support a claim that the foreign national's work benefits the U.S. as a whole..
- **Citations:** not only can citations show the impact that a foreigner's work has had on the field, but they can also demonstrate that their

work is being implemented and used by researchers across the country, and is therefore of national importance.

- **Letters of recommendation:** letters of recommendation can provide statements explaining the national benefits of a foreign worker's work, as well as providing examples of how his/her work is being implemented..

Be well positioned to advance the proposed endeavor

The second prong requires the alien to demonstrate that he or she is well positioned to advance the proposed endeavor. Factors USCIS considers include, but are not limited to: the alien's education, skills, knowledge and record of success in relation to or similar endeavors; a model or plan for future activities; any progress toward achieving the proposed venture; and the interest of potential customers, users, investors, or other relevant entities or individuals. Petitioners need to establish, with substantial evidence, that they are well positioned to move forward on the proposed venture. An important note from Dhanasar is that even if there is no certainty that the proposed endeavor will be a success, USCIS can still determine that the alien is well positioned to move forward in the endeavor. However, unfounded allegations are insufficient and do not satisfy the petitioner's burden of proof.

Evidence: Examples of evidence may be detailed expert letters demonstrating the U.S. government's interest in the petitioner's research, documentation that the petitioner has played a significant role in government-funded projects and evidence of the foreign national's academic background, skills, knowledge, experiences, and other notable accomplishments in their field, including associations or media publications.

List of possible evidence:

A. Publications and citation records (including journal articles, book chapters, and books)

A complete publication record must be included in the petition in order to demonstrate the foreigner's historical past of scientific achievement. The publication alone, however, will not demonstrate the influence of the foreigner in the field. The publication record must be accompanied by a citation record, in order to demonstrate the influence of the foreigner's work in the field, and

to show that the work is being used by other researchers in the field. In addition, journal impact factors and average citation records for the field can be used to show that the foreigner has a degree of influence above the average researcher in the field. It should be noted that there is no "magic number" of citations that will guarantee NIW (National Interest Waiver) approval, and there are many strategies that can be used to compensate for a low citation record.

B. Letters of Recommendation

Letters of recommendation are a crucial aspect of the NIW (National Interest Waiver) petition. Independent letters of recommendation (from those who have never worked or studied with you, collaborated with you, or advised your work), will carry much more weight with USCIS than letters from dependent recommenders, and this should be taken into account when selecting recommenders. Letters of recommendation should discuss your research contributions and their significance in layman's terms, and also comment directly on the benefit of your work to the United States.

Letters of recommendation are also a great opportunity to demonstrate the implementation of your work. A letter of recommendation from someone who has used your work, and can explain how they have done so in the letter, is a great way to strengthen your case.

C. U.S. Government Funding/Grants:

Funding from reputable institutions or government agencies such as the U.S. military, NIH, NASA, etc. are strong evidence to demonstrate the national importance of foreign labor. It is essential to demonstrate the high level of foreign involvement in the application for funding and their important role in the research related to the funding after it has been awarded.

D. Affiliations:

If affiliations are in the foreigner's area of specialization and require exceptional achievements as selective criteria, associations can enhance the foreigner's overall credentials.

E. Awards:

For awards to strengthen the NIW petition, ideally they need to be given specifically to the domestic alien and nationally/internationally recognized.

Awards open to individuals in a particular institution, city, or state/region/province are not as influential. For example, an award given by the American Chemical Society would likely be recognized nationally because it is the largest professional organization for chemists in the U.S..

F. Published National Stories About Abroad:

The benefit of a job for the U.S. can be shown by the media coverage. If the articles or publications bring evidence focused on the foreign worker or the work he has done in the field of contracting, and the national or internationally recognized media gives prominence, this will be useful for the NIW petition.

G. Patents, Contracts, Licenses and Technology Transfers:

A complete patent filing, accompanied by evidence of citation or commercialization is significantly useful in demonstrating the usefulness of the foreign worker's labor as being adopted by the domestic industry. Other similar evidence, including contracts, licenses, and technology transfers, also demonstrates the implementation of the foreigner's work.

H. Third-Party Evidence Based on the Foreigner's Work:

If the foreigner's work or assistance was requested by researchers from other institutions, it reaffirms the impact and significance of the foreigner's effort. Documentation such as email correspondence and confirmation in major trade publications or major media outlets are good evidence.

I. Primary or Critical Role:

Evidence showing that the alien has a principal, critical or indispensable role in the enterprise or similar may be very relevant to the NIW.

SECTION 1.5: WHAT DOES THE USCIS MANUAL SAY?

A. Advanced Degree Professionals

1. Eligibility

To qualify for this immigrant classification as a professional with an advanced degree, the following requirements must be met:

- The beneficiary must be a member of the professions holding an advanced degree or an equivalent foreign degree;
- The position certified in the underlying application for permanent labor certification or in the application of "Schedule A" must require at least one professional holding an advanced degree or equivalent; and
- The beneficiary must not only have obtained the advanced degree or its equivalent on the date the application for permanent labor certification was submitted, but must also have met all the necessary requirements to enter the position offered at that time.

2. Equivalent Foreign Degrees

An advanced degree is any U.S. academic or professional degree or an equivalent foreign degree above the baccalaureate level. A U.S. bachelor's degree or an equivalent foreign degree followed by at least 5 years of progressive experience in the specialty is considered equivalent to a master's degree. If a doctorate is customarily required by the specialty, the recipient must have a U.S. doctorate or an equivalent foreign degree.

A beneficiary can meet the advanced degree requirement by possessing:

- U.S. master's degree or higher or a foreign degree assessed as equivalent to a U.S. master's degree or higher; or
- U.S. bachelor's degree, or a foreign degree assessed as equivalent to a U.S. bachelor's degree, plus 5 years of progressive work experience after earning the degree.

A beneficiary who does not hold at least a U.S. bachelor's degree or an equivalent foreign degree is not eligible for this classification.

3. Advanced Degree Position

The mere possession of an advanced degree or its equivalent is not sufficient to establish a beneficiary's eligibility for this classification. The petitioner must also demonstrate that the certified position in the underlying application for permanent labor certification or in the Schedule A application requires a professional holding an advanced degree or equivalent. The petitioner must demonstrate that the position and the industry as a whole normally require that the position be held by a person with an advanced degree.

When the position requires multiple credentials combined with experience, the question is not whether the combination of more than one of the foreign degrees or credentials is comparable to a single U.S. bachelor's degree or an advanced degree, but rather whether the minimum requirements for the position in the permanent labor certification meet the definition of an advanced degree.

This requirement resulted in a specific problem involving petitions filed on behalf of registered nurses. Although many of these nurses hold advanced degrees, they are holding nursing positions in the United States that do not usually require advanced degrees. Specifically, the Occupational Information Network (O*Net) indicates that in nursing, only managerial positions (director of nursing or assistant director of nursing) or advanced level positions (such as clinical nurse specialist, practicing nurse) usually require advanced degrees. A registered nurse position, on the other hand, usually does not require an advanced degree.

The long waiting periods often required for the issuance of third-preference immigrant visas to skilled workers, professionals, or other workers can cause a gap between the available supply of eligible nurses and the high demand for nursing services. Agents must check the actual minimum requirements for the nursing position offered in the advanced degree petition. As mentioned, most nursing positions do not qualify for the advanced degree classification.

B. Exceptional Ability

1. Eligibility

A beneficiary may qualify for the exceptional ability visa classification if:

- He or she has exceptional ability in the sciences, arts, or business;
- He or she will substantially benefit the national economy, cultural or educational interests, or the welfare of the United States in the future; and
- Your services in one of these fields are sought after by an employer in the United States.

The term exceptional ability is defined as a degree of expertise significantly above that commonly found in the sciences, arts, or business. This standard is lower than the standard for the extraordinary ability rating.

2. Evidence

Officers must use a two-step analysis to evaluate the evidence presented with the petition to demonstrate eligibility for the classification of exceptional ability.

Petition for Exceptional Ability Rating: Overview of Two-Step Evidence Assessment	
Step 1	Assess whether the evidence meets the regulatory criteria: Determine, by the predominance of evidence, which evidence presented by the petitioner objectively meets the parameters of the regulatory description that applies to that type of evidence (referred to as "regulatory criteria").
Step 2	Final Determination of Merits: Evaluate all evidence together when considering the petition as a whole for the final determination of merit, taking into account the high level of expertise required for this immigrant classification.

Assess whether the evidence meets any regulatory criteria.

The first step of reviewing the evidence is limited to determining whether the evidence presented with the petition consists of at least three of the six regulatory criteria. The officer must apply the "preponderance of evidence" standard in making this determination.

While officers should consider the quality and caliber of evidence to determine whether a particular regulatory criterion has been met, officers should still not make a determination as to whether or not the beneficiary qualifies for exceptional ability in this first step.

Initial evidence must include at least three of the following six types of evidence listed in the regulations:

- An official academic record showing that the recipient holds a degree, certificate, or similar award from a college, university, school, or other educational institution related to the area of exceptional ability;
- Evidence in the form of letter(s) from current or previous employer(s) showing that the beneficiary has at least 10 years of full-time experience in the occupation for which they are being sought;
- A license to practice the profession or certification for a particular profession or occupation;
- Evidence that the beneficiary has received salary or other compensation for services that demonstrate exceptional ability. (To meet this criterion, evidence must show that the beneficiary has received salary or compensation for services that indicate his or her exceptional ability compared to others working in the field);
- Evidence of membership in professional associations;
- Evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities, or professional or trade organizations.

In some cases, evidence relevant to one criterion may be relevant to other criteria.

In addition, if these types of evidence do not readily apply to the beneficiary's occupation, the petitioner may present comparable evidence to establish the beneficiary's eligibility. This provides petitioners with the opportunity to present comparable evidence to establish beneficiary eligibility if regulatory standards do not readily apply to the beneficiary's occupation. In evaluating

such comparable evidence, officers consider whether the criteria are readily applicable to the beneficiary's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in the regulation.

General claims that any of the six objective criteria do not readily apply to the beneficiary's occupation are not acceptable. Similarly, the claim that USCIS should accept witness letters as comparable evidence is not persuasive. The petitioner must explain why the evidence he or she has presented is comparable.

Objectively meeting the regulatory criteria alone does not establish that the beneficiary actually meets the requirements for the classification of exceptional ability. For example, membership in professional associations on its own, regardless of caliber, must satisfy one of the three required regulatory criteria. However, the beneficiary's affiliation should also be evaluated to determine whether it is indicative that the beneficiary possesses a degree of expertise significantly above that commonly found in the sciences, arts, or business. However, this secondary evaluation must be carried out as part of the final determination of merit.

Final Determination of Merit

Meeting the minimum requirement by providing at least three types of initial evidence does not, by itself, establish that the beneficiary meets the requirements for the classification of exceptional ability. Officials should also consider the quality of the evidence. In the second part of the analysis, officers should evaluate the evidence together when considering the petition as a whole for the final determination of merit. The officer must determine whether or not the petitioner, by a preponderance of evidence, has demonstrated that the grantee possesses a degree of expertise significantly above that commonly found in the sciences, arts, or business.

When requesting additional evidence or drafting a denial, if the officer determines that the petitioner has not demonstrated this requirement, he or she should not make only general allegations about that failure. Instead, the officer should articulate the specific reasons why he or she concludes that the petitioner, by a preponderance of the evidence, has not demonstrated that the beneficiary qualifies for the classification of exceptional ability.

The petitioner must demonstrate that the beneficiary is above the others in the field; The qualifications possessed by most members of a given field cannot demonstrate a degree of expertise significantly above that commonly encountered. The mere possession of a diploma, certificate, or similar award from a college, university, school, or other educational institution alone is not considered sufficient evidence of exceptional ability.

In addition, formal recognition in the form of certificates and other documentation contemporaneous with the contributions and achievements claimed by the beneficiary may carry more weight than letters prepared for the petition acknowledging the beneficiary's achievements. As with all decisions, if an officer believes that the facts stated in the petition are not true and can articulate a denial, then the officer denies the petition and explains the reasons in the written denial.

3. Schedule A Permanent Work Certification, Group II

Schedule A, Group II permanent work certification for persons of "exceptional ability in the sciences or arts" is distinct from the classification as a person of "exceptional ability in the sciences, arts, professions, or business." Under U.S. Department of Labor (DOL) regulations, an employer seeking permanent labor certification on behalf of a person of "exceptional ability in the sciences or arts" may apply directly to USCIS for Schedule A, Group II permanent labor certification instead of applying to DOL for issuance of a permanent labor certification.

C. Professional Athletes

1. Eligibility

The Immigration and Nationality Act (INA) defines professional athletes for the purpose of allowing them to maintain the validity of the underlying permanent labor certification if they change employers. These athletes may qualify for the exceptional ability rating. Specifically, the precedent-setting "Matter of Masters" decision established that a professional golfer could, if otherwise eligible, qualify for the classification of exceptional ability in the arts.

This decision has been interpreted to apply to exceptional ability petitions filed on behalf of any athlete. However, the fact that the beneficiary has signed a contract to play for a major league team may not be enough to establish exceptional ability as a professional athlete.

Definition of Professional Athlete

For purposes of this classification, the term professional athlete means a person who is employed as an athlete by:

- A team that is a member of an association of six or more professional sports teams whose total combined revenue exceeds \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or
- Any minor league team affiliated with such an association.

Validity of Permanent Labor Certification

A petition for the classification of a professional athlete is supported by an underlying permanent labor certification filed on behalf of the beneficiary, which remains valid even if the athlete changes employers, as long as the new employer is a team in the same sport as the team that filed the petition.

Employers who submit applications for permanent labor certification on behalf of beneficiaries to be employed as professional athletes on professional sports teams submit applications for permanent labor certification under special procedures for professional athletes directly to the appropriate DOL processing center.

2. Evidence

As is the case with all petitions for persons of exceptional ability, the petitioner must provide, as initial evidence, documentation demonstrating that the beneficiary qualifies for the classification of exceptional ability as specified in the regulations. However, the submission of evidence that meets the three required regulatory criteria does not necessarily establish that the beneficiary is qualified for the classification. An officer must assess the quality of such evidence, in addition to the amount of evidence presented, to determine

whether the petitioner has met his or her burden of establishing that the beneficiary is eligible for classification.

Similarly, an approved permanent labor certification filed on behalf of a professional athlete does not prove that the beneficiary qualifies as an athlete of exceptional ability. Officers should look for evidence of exceptional ability beyond the mere existence of a contract with a major league team or an approved permanent labor certification.

An approved permanent labor certification filed on behalf of the beneficiary does not bind USCIS to a determination that the person is of exceptional ability. Notwithstanding the granting of a permanent labor certification, the beneficiary may, for various reasons, be unable to fulfill the underlying purpose of the petition.

Many athletes, for example, enjoy substantial signing bonuses, but may, after that, not prove to be "major league" players, let alone exceptional caliber. Similarly, the fact that a beneficiary has played for a portion of a season for a major league team does not automatically establish that the beneficiary will continue to play at an exceptional skill level. It would be inappropriate to approve an immigrant visa petition on behalf of a major league player on the basis of exceptional abilities if the beneficiary is unlikely to continue to perform the duties specified in the underlying petition for a reasonable period of time after lawful permanent resident status is approved.

In addition, the beneficiary may be cut from the major league roster, may announce their permanent retirement as a sports player, or suffer a career-ending injury prior to the petition's adjudication, thereby removing the job offer that formed the basis of the petition, which would result in a denial of the petition.

D. Exemption from Job Offer for National Interest

Since 1990, the Immigration and Nationality Act (INA) has provided that a person of exceptional ability may obtain an exemption from the job offer requirement if USCIS deems that such an exemption is in the "national interest." A subsequent technical amendment extended the exemption from the job offer to certain professionals. This exemption provision applies only to the second preference classification (EB-2) for members of the professions

with advanced degrees and persons of exceptional ability. This exemption from the job offer is known as a national interest exemption.

A petition filed with a request for a national interest exemption on behalf of a person does not need to be supported by a job offer; therefore, the person can ask for himself. The job offer exemption also includes an exemption from the permanent labor certification requirement. In support of the petition, however, the petitioner must submit the employee-specific portions of a permanent labor certification (without DOL approval). The petitioner may file Form ETA 750B or Form ETA 9089. To establish eligibility, the petitioner has the burden of demonstrating that:

- The person qualifies as a member of the professions with an advanced degree or as a person of exceptional ability; and
- Exemption from the job offer requirement, and therefore the labor certification requirement, is in the "national interest".

Qualification for EB-2 classification as a member of the advanced degree professions or as a person of exceptional ability does not automatically mean that the person qualifies for a national interest exemption. Regardless of whether the person is a professional with an advanced degree or demonstrates exceptional ability, the petitioner seeking an exemption from the job offer must not only demonstrate eligibility for the classification, but also demonstrate that the exemption itself is in the national interest.

Specifically, in the context of exceptional ability, the INA requires that all petitions for a person of exceptional ability show that the person's presence in the United States will substantially benefit the national economy, cultural or educational interests, or the well-being of the United States in the future. Even if the petitioner demonstrates such exceptional ability, if the petitioner is seeking an exemption from the job offer, the petitioner must also demonstrate the additional national interest requirement. Neither the INA nor the regulations define the term "national interest".

The onus is on the petitioner to establish that the exemption from the job offer requirement is in the national interest. USCIS considers each petition on a case-by-case basis.

USCIS may grant a national interest waiver as a matter of discretion if the petitioner demonstrates eligibility by a preponderance of evidence, based on the following three points:

- The undertaking proposed by the person has substantial merit and national importance;
- The person is well-positioned to promote the proposed venture; and
- Overall, it would be beneficial for the United States to exempt the job offer and therefore the permanent labor certification requirements.

Section 1 below provides an overview of the three points that are part of the analysis; section 2 provides specific guidance for people with advanced degrees in science, technology, engineering, or mathematics (STEM); Section 3 deals with letters of support and other evidence from interested government agencies and quasi-governmental entities; And finally, section 4 is specific to entrepreneurs.

When an officer denies a petition because the petitioner has not demonstrated that granting the waiver is in the national interest, the decision must include information about the rights of appeal and the opportunity to file an appeal or request for reconsideration.

1. Overview of the Three "Prongs" (Criteria)

First Criterion: The Activity Proposal Has Substantial Merit and National Importance

In reviewing the activity proposal, officers determine whether the evidence presented demonstrates, by a preponderance of evidence, that the activity proposal has substantial merit and national importance. The term "activity" is more specific than occupation in general; The applicant must offer details not only about what the occupation typically entails, but about what types of work the person proposes to perform specifically within that occupation. For example, while engineering is an occupation, the explanation of the activity proposal should describe the specific projects and objectives, or the areas of engineering in which the person will work, rather than simply listing the roles and responsibilities of an engineer.

Merit of the activity can be demonstrated in areas including, but not limited to, business, entrepreneurship, science, technology, culture, health, or education.

In addition, officials may consider evidence of the potential significant economic impact of the activity, but "merit may be established without immediate or quantifiable economic impact" and "activities related to research, pure science, and the advancement of human knowledge may qualify, regardless of whether or not potential achievements in these fields translate into economic benefits to the United States."

Officers should also examine the national significance of the specific proposed activity, considering its potential prospective impact. Officers should focus on the nature of the proposed activity, rather than just the geographic scope of the activity.

For example, the activity "may have national importance because it has national or even global implications within a specific field, such as certain improved manufacturing processes or medical advances." Economically, it may have "significant potential to employ U.S. workers" or "other substantial positive economic effects, especially in an economically depressed area." Therefore, applicants must submit a detailed description explaining the proposed activity and supporting documentary evidence to establish that the activity is of national importance.

In determining national importance, the officer's analysis should focus on what the beneficiary will be doing, rather than the specific occupational classification. Activities, such as classroom teaching, for example, without broader implications for a field or region, generally do not reach the level of national importance for purposes of establishing eligibility for a national interest waiver.

Ultimately, if the evidence demonstrates that the person's proposed activity possesses the significant potential to vastly enhance the well-being of society, cultural or artistic enrichment, or contribute to the advancement of a valuable technology or field of study, it may attain the level of national importance.

Second Criterion: The Person Is Well-Positioned to Move Forward with the Activity Proposal

Unlike the first criterion, which focuses on the merit and importance of the activity proposal, the second criterion focuses on the person. Specifically, the applicant must demonstrate that it is well placed to move forward with the proposed activity.

In assessing whether the person is well-positioned to move forward with the proposed activity, USCIS considers factors, including but not limited to:

- The person's education, skills, knowledge, and history of success in related or similar endeavors;
- A template or plan that the person has developed, or played a significant role in developing, for future activities related to the proposed activity;
- Any progress towards the realization of the activity proposal; and
- The interest or support obtained by the person from potential customers, users, investors or other relevant entities or persons.

The applicant must present evidence to document the person's past accomplishments and corroborate projections related to the activity proposal, showing that the person is well-positioned to move forward with the activity. A person may be well-positioned to move forward with an activity, even if they cannot demonstrate that the proposed activity is more likely than not to succeed in the end. However, unsubstantiated or implausible claims would not meet the plaintiff's burden of proof.

Here is a non-exhaustive list of the types of evidence that tend to show that the person is well-positioned to move forward with an activity proposal. This list is not intended to be a checklist or to indicate that any particular type of evidence is required or sufficient to establish eligibility.

Evidence that can demonstrate that the person is well-positioned to move forward with an activity proposal includes, but is not limited to:

- Degrees, certificates, or licenses in the field;
- Patents, trademarks, or copyrights developed by the person;
- Letters from experts in the person's field, describing the person's past accomplishments and providing specific examples of how the person is well-positioned to move forward with their activity proposal;
- Published articles or media reports about the person's accomplishments or current work;
- Documentation that demonstrates a strong citation history of the person's work or excerpts from published articles showing a positive discourse or adoption of the person's work;
- Evidence that the person's work influenced the field of activity;
- A plan outlining how the person intends to continue the proposed work in the United States;
- A detailed business plan or other description, along with any relevant supporting evidence, where appropriate;
- Correspondence from employers, clients or potential clients;
- Documentation reflecting viable plans for financial support (see below for a more detailed discussion of the evidence relating to financing for entrepreneurs);
- Evidence that the person has received investments from U.S. investors, such as venture capital firms, angel investors, or startup accelerators, and that the amounts are appropriate for the relevant activity;
- Copies of contracts, agreements, or licenses showing the potential impact of the proposed activity;
- Letters from government agencies or quasi-governmental entities in the United States demonstrating that the person is well-positioned to move forward with the proposed activity (see below for a more detailed discussion of supporting evidence from interested government agencies and quasi-governmental entities);
- Evidence that the person has received awards or scholarships or other indications of relevant non-monetary support (e.g., using facilities free of charge) from federal, state, or local government entities with expertise in economic development, research and development, or job creation; and

- Evidence demonstrating how the person's work is being used by others, such as, but not limited to,:
 - Contracts with companies that use products developed or aided by the person's work;
 - Documents showing technology that the person invented or contributed to inventing and how others use that technology; and
 - Patents or licenses for innovations developed by the person, with documentation showing why the patent or license is significant to the field.

In each case, officers should consider the totality of the circumstances to determine whether the preponderance of evidence establishes that the person is well positioned to move forward with the proposed activity.

Third Criterion: Overall, it would be beneficial for the United States to waive the job offer and thus the permanent labor certification requirements

Once the officers have determined that the applicant has met the first two criteria, they proceed with the analysis of the third criterion. This latter criterion requires the applicant to demonstrate that the factors in favor of granting the waiver outweigh those supporting the requirement of a job offer and thus a labor certification. This is intended to ensure that the admission of foreign workers does not negatively affect the employment opportunities, wages, and working conditions of U.S. workers.

While Congress has sought to advance the national interest by requiring job offers and labor certifications to protect U.S. workers, it has also recognized that in certain situations the national interest is best served by a waiver of the job offer and thus the requirement of labor certification. In such cases, a waiver in the national interest outweighs the benefits inherent in the labor certification process, which focuses primarily on a geographically limited labor market. In the context of national interest resignation decisions, Congress entrusted the Secretary of Homeland Security with balancing that interest.

Therefore, for the third criterion, an officer evaluates whether the person's proposed activity and the person being well-positioned to move forward with that activity together bring benefits to the nation in such a way that a waiver of the labor certification requirement outweighs the benefits that normally

derive from that requirement. For example, in the case of an entrepreneur, where the person is self-employed in a way that does not generally adversely affect U.S. workers, or where the applicant establishes or owns a business that provides jobs to U.S. workers, there may be little benefit to labor certification.

Therefore, when establishing eligibility for the third criterion, applicants may submit evidence related to one or more of the following factors, as outlined in *Matter of Dhanasar*

(<https://www.justice.gov/eoir/page/file/920996/download>):

- The Impracticality of a Labor Certification Application;
- The benefit to the United States of prospective noncitizen contributions, even if other U.S. workers were also available; and
- The national interest in the person's contributions is urgent enough, as is U.S. competitiveness in STEM fields.

More specific considerations may include:

- Whether urgency, such as public health or safety, justifies forgoing the labor certification process;
- Whether the labor certification process can prevent an employer from hiring a person with unique knowledge or skills that exceed the minimum standard of requirements for that occupation, which cannot be adequately captured by labor certification;
- If the activity proposed by the person has the potential to generate considerable revenue consistent with, for example, economic revitalization; and
- Whether the person's proposed activity can lead to potential job creation.

2. Specific Evidence Considerations for People with a Master's or PhD in Science, Technology, Engineering, or Mathematics (STEM)

There is specific evidence considerations related to degrees and STEM fields, although the analysis is the same regardless of the venture, so these considerations may apply to non-STEM endeavor when the applicant demonstrates that such considerations are applicable. USCIS recognizes the importance of progress in STEM fields and the essential role of people with advanced STEM degrees in fostering that progress, especially in critical and

emerging focused technologies or other STEM fields important to U.S. competitiveness or national security.

To identify an area of critical and emerging technology, officials consider government, academic, and other authoritative and instructive sources, and all other evidence presented by the applicant. Lists of critical and emerging technology subareas published by the Executive Office of the President, the National Science and Technology Council, or the National Security Council are examples of authoritative lists. Officers may consider a STEM area important for competitiveness or security in various circumstances, for example, when evidence on the record demonstrates that an endeavor will help the United States stay ahead of current and potential strategic competitors or adversaries, or is related to a field, including those that are research and development-intensive industries, where appropriate activities and investments, both early in and later in the development cycle, can contribute to the United States achieving or maintaining technological leadership or equal status among allies and partners.

With respect to the first criterion, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance. Many proposed ventures that aim to advance STEM technologies and research, whether in academia or industry, not only have substantial merit relative to U.S. science and technology interests, but also have potential implications broad enough to demonstrate their national importance. On the other hand, proposed STEM classroom teaching activities, for example, may have substantial merit relative to U.S. educational interests, but they generally do not indicate an impact on the field of STEM education as a whole, and thus would not generally establish its national importance.

For the second criterion, as mentioned above, the person's education and skills are relevant in determining whether the person is well-positioned to move forward with the venture. USCIS considers an advanced degree, especially a Doctorate (Ph.D.), in a STEM field related to the proposed endeavor and related to work that promotes a critical and emerging technology or other STEM area important to competitiveness or national security, an especially positive factor to consider along with other evidence for purposes of the evaluation in the second criterion.

People with a Ph.D. in a STEM field, as well as some other people with advanced STEM degrees related to the proposed endeavor, have scientific expertise in a specific STEM field, as doctoral dissertations and some master's theses focus on a particular topic. Officers should then consider whether that particular STEM area relates to the proposed endeavor. Even when the area of concentration is in a theoretical STEM area (theoretical mathematics or physics, for example), it can promote U.S. competitiveness or national security, as outlined in the proposed venture.

Examples of evidence that may supplement the person's education are listed above, but an applicant may submit any relevant evidence, including letters from interested government agencies, as discussed below, to show how well-positioned the person is to move forward with the proposed endeavor. However, a degree in itself is not a basis for determining that a person is well-positioned to move forward with the proposed venture.

Finally, in relation to the third criterion, it is the applicant's responsibility to establish that the factors in favor of granting the waiver outweigh those that support the requirement of a job offer and, therefore, a labor certification.

In evaluating the third criterion and whether the United States may benefit from the person's entry regardless of the availability of other U.S. workers (as well as other factors related to the third criterion discussed above, such as urgency), USCIS considers the following combination of facts contained in the record to be a strong positive factor:

- The person has an advanced STEM degree, especially a Ph.D.;
- The person will engage in work that promotes a critical, emerging technology or other STEM field important to U.S. competitiveness; and
- The person is well-positioned to move forward with the proposed STEM endeavor of national importance.

The benefit is especially relevant when the venture has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested U.S. government agencies, as discussed in section 3 below.

3. The Role of Interested Government Agencies or Quasi-Governmental Entities

Although not mandatory, letters from interested government agencies or quasi-governmental entities in the United States (for example, federally funded research and development centers) can be useful evidence and, depending on the content of the letters, may be relevant to all three criteria. Specifically, letters from an interested government agency or quasi-governmental entity may be favorable for purposes of the first criterion if, for example, they establish that the agency or entity has expertise in the proposed endeavor and that the proposed STEM endeavor promises to advance a critical, emerging technology or is otherwise important to maintaining the technological prominence of the United States.

Detailed governmental or quasi-governmental letters of interest that provide relevant information about how the person is well positioned to advance the endeavor are valuable for purposes of evaluating the second criterion. Finally, an interested government agency or quasi-governmental entity can help explain how granting the waiver might outweigh the benefits of the job offer and labor certification requirement by explaining a specific urgency or detailing how the United States would benefit from the prospective noncitizen's contributions, even if other U.S. workers are available.

4. Specific considerations for entrepreneurs

There may be unique aspects to the evidence submitted by an entrepreneurial petitioner who is undertaking a proposed venture, including through a U.S.-based entity in which the petitioner generally has (or will have) an ownership interest, and in which the petitioner plays (or will play) an active and central role, such that the petitioner's knowledge, skills, or experience significantly drive the proposed venture.

When assessing whether such petitions meet the three-criteria framework, officers may consider the fact that many entrepreneurs do not follow traditional career paths and there is no single way in which an entrepreneurial startup entity should be structured.

In addition to the more broadly applicable evidence described above, an entrepreneurial petitioner may present the following types of evidence to establish that the venture has substantial merit and national importance, that the petitioner is well positioned to advance the venture, and that, on balance, it would be beneficial to waive the job offer and thus labor certification requirements.

Evidence of Ownership and Role in U.S.-Based Entity

The petitioner may have an ownership interest in a U.S.-based entity, of which the petitioner may also be the founder or co-founder. The petitioner may also play an active and central role in the entity's operations, as evidenced by the petitioner's appointment as a director (or similar position of authority) of the entity or in another key position within the entity. Such evidence may have probative value in demonstrating that the petitioner is well placed to advance the venture.

Diplomas, Certifications, Licenses, Letters of Experience

This evidence may indicate that the petitioner has knowledge, skills or experience that would significantly boost the proposed venture carried out by the entity. Education and professional background, along with other factors related to the petitioner's background, may serve to corroborate the petitioner's claims. Examples include successful leadership of previous ventures or the combination of relevant degrees and experience to equip the petitioner to advance in the proposed venture.

Investments

An investment, binding commitment to invest or other evidence demonstrating a future intention to invest in the entity by an outside investor, in accordance with industry standards, can provide independent validation and support for a finding of the substantial merit of the proposed venture or that the petitioner is well positioned to move forward in the proposed venture. This investment can come from individuals, such as angel investors, or from established organizations, such as venture capital firms. Because different ventures have different capital needs, USCIS also considers the amount of capital that would be appropriate to advance the venture when determining whether the petitioner has secured sufficient investments.

Participation in Incubators or Accelerators

Incubators are private or public entities that provide resources, support, and assistance to entrepreneurs to foster the growth and development of an idea or venture. Accelerators are typically private venture capital entities and focus on helping entrepreneurs and their startups accelerate the launch, growth, and scale of their businesses.

Officers may consider evidence of an entrepreneur's admission to an incubator or accelerator as an endorsement of the proposed plan or the petitioner's past history, and the petitioner is well-positioned to advance the venture. Petitioners may present evidence of the past success of the incubator for officers to consider when evaluating that evidence.

Awards or Grants

Relevant funds may come from federal, state, or local government entities with expertise in economic development, research and development, or job creation. Additionally, awards or grants may be awarded by other entities, such as research or policy institutes. As with investment from outside investors, this evidence can provide independent validation and support for a finding of substantial merit, national importance, or both, of the proposed venture or that the petitioner is well positioned to move forward with the proposed venture.

Intellectual property

Intellectual property, including relevant patents held by the petitioner or one of the petitioner's current or previous startup entities, accompanied by documentation showing why the intellectual property is significant to the field or venture, can serve as evidentiary evidence of a prior track record of success and potential progress toward the venture. The petitioner must submit evidence to document how the petitioner contributed to the development of the intellectual property and how it was or can be used internally or externally.

Published Materials About the Petitioner, the U.S.-Based Entity, or Both

Relevant published materials may consist of print or online newspaper articles or other similar published materials that show that the petitioner or the petitioner's entity, with some reference to the petitioner's role, has received significant media attention or recognition. Petitioners may present evidence of media reputation for officers to consider when evaluating that evidence.

Revenue Generation, Revenue Growth, and Job Creation

Relevant growth metrics may indicate that the proposed venture, the petitioner's startup entity, or both, has substantial merit or that the petitioner is well-positioned to advance the proposed venture. Such evidence may include demonstrations that the entity has demonstrated growth in terms of revenue generation, jobs created in the United States, or both, and the petitioner's contribution to that growth.

This evidence may also indicate that the proposed venture, the petitioner's startup entity, or both, have national importance when combined with other evidence, such as the location of the current or proposed startup entity in an economically depressed area that has benefited or will benefit from the jobs created by the startup entity.

Letters and Other Statements from Third Parties

Letters can be from, for example, relevant government entities, external investors, or established trade associations with knowledge about:

- The research, products, or services developed by the petitioner, the petitioner's entity, or both; or knowledge, skills, or
- Petitioner's experience that would drive the proposed undertaking.

Although entrepreneurs generally do not undergo the same type of peer review common in academia, entrepreneurs may operate in a variety of high-tech or cutting-edge industries that have their own industry or technology experts who provide various forms of peer review.

In addition, the merits of the entrepreneur's business, business plan, product or technology may undergo various forms of review by third parties, such as

potential investors, retailers or other industry experts. Therefore, letters and other statements from relevant third-party reviewers may have probative value in demonstrating the substantial merit and national importance of the venture and that the individual is well positioned to advance the venture.

Generally, many entrepreneurial ventures are measured in terms of revenue generation, profitability, valuations, cash flow or customer adoption. However, other metrics may be equally important in determining whether the petitioner has established each of the three criteria.

As noted in Matter of Dhanasar, "many innovations and entrepreneurial ventures can fail, in whole or in part, despite an intelligent plan and skillful execution." Therefore, the petitioners are not required to establish that the proposed venture is more likely to succeed in the end based solely on the typical metrics used to measure entrepreneurial ventures (although such presentations may be considered favorably).

They must show that the proposed venture has substantial merit and national importance, that the petitioner is well positioned to advance in the proposed venture, and that, on balance, it would be beneficial to the United States to waive the job offer and thus labor certification requirements.

Evidence establishing the petitioner's past entrepreneurial achievements and corroborating projections of future work in the national interest are favorable factors. Allegations without corroborating evidence are not sufficient to meet the petitioner's burden of proof. As in all cases, officers must consider the totality of the circumstances to determine whether each of the three criteria is established by a preponderance of the evidence.

SECTION 1.6: KEY UPDATES TO USCIS POLICY FOR EB-2 NIW

1. Enhanced Emphasis on EB-2 Eligibility:

- **Pre-2025:** EB-2 eligibility was a requirement, but the focus was primarily on the NIW criteria.

- **Post-2025:** USCIS now explicitly emphasizes that applicants must first meet the strict criteria for professionals with an advanced degree or persons of exceptional ability before proceeding to the NIW evaluation.
- **Impact on Applicants:** Applicants must meticulously document their educational and professional qualifications to demonstrate clear eligibility for the underlying EB-2 category.

2. **Strengthening the Link Between Exceptional Ability and the Proposed Endeavor:**

- **Pre-2025:** A general connection between exceptional ability and proposed work was sufficient.
- **Post-2025:** USCIS now calls for a stronger, more direct relationship. Applicants must clearly demonstrate how their specific area of exceptional ability directly aligns with and supports their proposed endeavor.
- **Impact on Applicants:** Applicants need to meticulously articulate how their unique skills, knowledge, and expertise in their field of exceptional ability are directly relevant to the proposed job and contribute to its success.

3. **Enhanced Focus on "Endeavor" and the National Interest:**

- **Pre-2025:** A broader definition of "endeavor" was acceptable.
- **Post-2025:** The "endeavor" should now be clearly defined as a specific project or initiative with a detailed description of the work to be carried out.
- **Impact on Applicants:** Applicants must go beyond simply stating their occupation. They should provide a comprehensive and compelling narrative of their proposed venture, outlining its scope, objectives, and expected outcomes.

- *For example, instead of simply stating that their work will create jobs, an entrepreneur could say, "My startup is projected to create 50 high-paying jobs in rural areas of America over the next three years, while reducing carbon emissions by 15%."*

4. **Emphasis on Evidence of "Well-Positioned to Advance the Endeavor":**

- **Pre-2025:** A wider range of evidence was considered sufficient.
- **Post-2025:** The guidance emphasizes that no single evidence is sufficient. Applicants must submit a robust portfolio of evidence demonstrating:
 - **Past Achievements:** Detailed documentation of past research, publications, awards, and professional accomplishments.
 - **Relevance to the Endeavor:** Clear explanations of how these past accomplishments directly relate to and support the proposed endeavor.
 - **Progress Toward the Endeavor:** Evidence of ongoing work and progress toward the proposed endeavor, such as research grants, collaborations, and preliminary findings.
- **Impact on Applicants:** Applicants must meticulously document their accomplishments and demonstrate a clear trajectory towards the successful completion of their proposed venture.

5. **Personalized Guidance for Specific Fields:**

- **Focus on STEM:**
 - **Pre-2025:** Widespread recognition of the importance of STEM fields.

- **Post-2025:** Explicit recognition of the critical role of STEM fields, particularly those related to critical and emerging technologies.
 - *Examples: Artificial intelligence, biotechnology, renewable energy, cybersecurity.*
- **Impact on Applicants:** Applicants in STEM fields should emphasize how their research or work contributes to advancements in these critical areas and addresses national priorities.
- **Entrepreneurial Endeavors:**
 - **Pre-2025:** Focus primarily on financial metrics.
 - **Post-2025:** Recognizes that success metrics for entrepreneurs can vary.
 - *Examples of Non-Financial Success Metrics: Social Impact, Technology Innovation, Market Disruption, and Customer Adoption.*
 - **Impact on Applicants:** Entrepreneurs should present a comprehensive picture of the success of their endeavor, considering not only financial metrics but also other relevant measures of impact and achievement.
 - *Example: "Demonstrating a commitment to sustainability, social responsibility, or addressing critical social needs can also significantly strengthen an entrepreneurial application."*

6. **Taking advantage of letters of support:**

- **Pre-2025:** Letters of support were considered, but their importance was not so explicitly emphasized.
- **Post-2025:** Letters of support from respected individuals or organizations in the relevant field are now considered crucial.
 - **Effective Letters:**
 - **Length:** Normally 1-2 pages.
 - **Content:** Should specifically address the applicant's qualifications, the merit of the proposed venture, and its potential impact on the United States.
 - **Writer's credentials:** Letters should come from individuals with recognized expertise in the applicant's field, such as professors, researchers or industry leaders.
 - **Impact on Applicants:** Seek letters of support from highly regarded individuals who can provide strong endorsements for the applicant and their proposed venture.

7. **Case-by-case evaluation:**

- **Pre-2025:** **Case-by-case** evaluation has always been a factor.
- **Post-2025:** The emphasis on a thorough and individualized assessment remains, with USCIS carefully considering all evidence submitted by the applicant.
- **Impact on Applications:** Each application is unique. Applicants must tailor their application to their specific circumstances and present a compelling case demonstrating their eligibility for the NIW.

Common Pitfalls to Avoid:

- **Disregarding Eligibility for EB-2: Failing to** adequately demonstrate eligibility for the underlying EB-2 category.
- **Weak Link Between Exceptional Ability and Endeavor:** Not clearly articulating the link between the candidate's area of exceptional ability and their proposed endeavor.
- **Vague or Generic Endeavor Description:** Failing to provide a detailed and specific description of the proposed endeavor and its national significance.
- **Insufficient Evidence:** Not presenting a comprehensive and convincing evidence package to support application.
- **Ignoring the Importance of Letters of Support:** Failing to secure strong letters of support from respected individuals in the field.

Estimated Timeline:

Processing time for NIW applications can vary significantly. Under the new guidelines, it is crucial to anticipate potential delays and plan accordingly.

Recommendations for Applicants:

- **Research and Thoroughly Define Your Endeavor:** Clearly articulate your proposed endeavor, its national significance, and how it will contribute to the United States.
- **Gather Strong Evidence:** Compile a comprehensive package of evidence that demonstrates your qualifications, the merit of your endeavor, and your ability to advance it.
- **Look for Expert Advice:** Consult an experienced immigration lawyer to navigate the complexities of the updated policy and ensure a well-prepared application.

Conclusion:

EB-2 NIW policy has undergone significant changes. Applicants must demonstrate strong EB-2 eligibility and a clear link between their exceptional ability and the proposed venture. A comprehensive and compelling narrative of the proposed endeavor and its national importance is crucial. Strong evidence, including letters of support, are essential for a successful application. Seeking expert guidance from an immigration lawyer is highly recommended.

Chapter 2: Eligibility Criteria

The EB-2 NIW (National Interest Waiver) Visa is a visa category for immigrants in the United States that allows qualified individuals to obtain permanent residency (Green Card) based on **exceptional abilities** and for the benefit of the **national interest**. To be eligible for this visa, it is essential to meet two main criteria:

1. **Eligibility for the EB-2 category:** The applicant must be a professional with an advanced degree (master's degree or higher) or possess exceptional skills in science, arts, or business.
2. **Proof of National Interest:** Applicant must demonstrate that his/her admission to the United States will substantially benefit the economy, cultural or educational interests, or welfare of the country.

Here are the key aspects of the EB-2 NIW Visa:

1. Demonstrating Exceptional Skill

To qualify under this criterion, it is necessary to demonstrate **exceptional abilities** in the sciences, arts, education, business, or athletics. The demonstration of exceptional abilities must be proven through substantial evidence, such as:

- **Awards and recognitions:** Relevant national or international awards.
- **Publications and citations:** Articles, books, and citations in academic papers.
- **Members in professional organizations:** Membership in associations that require exceptional achievements for admission.
- **Significant contributions:** Substantial impact on the field of activity, such as innovations, patents or projects of great relevance.

2. Proving National Interest

In addition to possessing exceptional abilities, the applicant must also prove that their presence in the United States is in the **national interest**. This is one of the distinguishing aspects of the EB-2 NIW. The applicant must present

evidence that shows how their abilities benefit the United States in a broad way, such as:

- **Contributions to the economy:** Job creation, development of critical technologies, or revitalization of economically depressed areas.
- **Scientific or technological advances:** Innovative research that promotes U.S. competitiveness.
- **Cultural or educational impact:** Contributions to the arts, education, or social welfare.

3. Educational and Professional Training

The applicant's **educational background** and **professional experience** are important factors for the analysis of the application. A solid and relevant background in the field in question, along with proven professional experience, strengthens the candidate's eligibility. It is essential to present complete and accurate documentation to meet these criteria.

4. Significant Contributions in the Field of Activity

To meet the requirements of the EB-2 NIW, it is essential to demonstrate **significant contributions** in the field. This may include:

- **Publications:** Articles in scientific journals, books or book chapters.
- **Research:** Innovative and impactful research projects.
- **Innovations and patents:** Development of new technologies, products or processes.
- **Conference Presentations:** Participation in prominent events in the field of activity.

These contributions must have a **substantial impact** on the field and be recognized by other professionals in the field.

5. Support from Experts in the Field

The support and recognition of **experts in the field of activity** are crucial to support the candidacy. **Letters of recommendation** from peers, supervisors, experts, and other relevant authorities can reinforce evidence of exceptional abilities and significant contributions. These letters should highlight:

- The importance of the candidate's work.
- The impact of their contributions in the field.
- How Your Presence in the U.S. Will Benefit the National Interest.

6. Opportunities to Continue Operating in the U.S.

It is essential to demonstrate that staying in the United States will facilitate and promote **future contributions** in the field of action. Showing **concrete plans** to continue working and contributing in the U.S. is highly valued. This may include:

- Future projects in progress or planned.
- Collaborations with institutions or companies in the USA.
- Long-term goals aligned with the national interest.

7. Impact on US National Interests

Proof of how the applicant's **exceptional abilities** positively affect **US national interests** is one of the pillars of the EB-2 NIW. This influence must be explained clearly and comprehensively, demonstrating how the applicant's presence is vital to the development and progress of the USA.

8. Proof of Professional Experience and Achievements

A crucial part of EB-2 NIW eligibility is demonstrating a **successful career** and **professional achievements**. This can include:

- Years of experience in your field.
- Previous employment history.
- Career progression.
- Successful projects with proven impact.

9. Relevance of Studies and Training

Educational **background** and any **additional training** should be presented in a way that highlights their relevance to your field of expertise and how they have contributed to your exceptional abilities. Certificates, diplomas, and courses that are aligned with your career are important elements of support.

10. Comparison with Professionals in the Same Area

Comparing your achievements, skills, and contributions to other professionals in the same field can bolster your claim of exceptional abilities. This can be done by analyzing:

- Wage studies.
- Industry Awards.
- Positions held in prestigious organizations.

11. Benefits to the U.S. Economy and Society

Showing how your skills and activities will contribute to the **U.S. economy and society** is crucial. This may include:

- Job creation.
- Stimulating economic growth.
- Improvements in certain sectors.

12. Preparation of Solid Documentation

The **documentation** submitted should be organized in a clear, concise, and precise manner. This may include:

- Curriculum.
- Publications.
- Awards.
- Diplomas.
- Letters of Recommendation.

It is important to ensure that the documentation is **complete** and complies with USCIS requirements.

13. Involvement in 'Endeavor' or Entrepreneurship Activities

An interesting area to explore is involvement in **entrepreneurial activities** or **'endeavor'**. This may include:

- Creation of companies, startups or independent projects.
- Significant impact on your field of endeavor or the broader economy.

14. Foundation or Participation in Companies

If you were **a founder** or played a key role in founding a company, it's important to detail that experience. Describe:

- The vision behind the company.
- How it was established.
- The challenges faced and the successes achieved.
- How the company contributes to the advancement in its area of operation.

15. Economic and Employment Impact

When talking about entrepreneurship, highlight the **economic** and **job creation impact** that your initiative has had. Explain:

- How many people were employed.
- How your company has contributed to the local or national economy.
- How entrepreneurial activities have positively affected the business ecosystem.

16. Recognition and Awards in the Business World

If your business or entrepreneurial projects have received **significant awards** or **recognition** in the industry, be sure to include this information. The awards can serve as proof of the impact and value of your venture in the field.

17. Innovation and Contribution to the Community

In addition to the economic aspects, highlight how his entrepreneurial activities promoted **innovation** in his area and **benefited the community**. This may include:

- Development of innovative solutions.
- Corporate Social Responsibility Programs.
- Other initiatives with a positive impact.

18. Future Outlook and Continuation of 'Endeavor'

Describe your **future prospects** in the business world, including:

- Plans to Expand Your Endeavor.
- Launch of new products or services.
- How does it plan to continue to contribute to the field of action and society.

19. Artists and the EB-2 NIW

Artists, whether musicians, writers, filmmakers, painters, or in other artistic disciplines, can pursue eligibility in the EB-2 NIW by demonstrating **exceptional skills** and **outstanding contributions** in their field. His artistic achievements, awards, exhibitions, publications, and cultural impact are considered to be of **national interest**. The continued presence of these talents in the United States enriches the country's culture and arts.

20. Scholars and Researchers in EB-2 NIW

Scholars, researchers, and faculty who possess **exceptional abilities** and contribute significantly to their fields of study may also qualify for the EB-2 NIW. Their **groundbreaking research**, **scholarly publications**, conference attendance, and contributions to the advancement of knowledge are highly valued. The stay of these scholars in the U.S. is seen as in the **national interest**, as it boosts the country's educational and scientific progress.

Conclusion

By gathering and presenting **solid evidence** that supports these criteria, it is possible to strengthen the EB-2 NIW visa application. Be prepared to document your accomplishments, achievements, and contributions in a detailed and accurate manner, aligning with current USCIS guidelines and the **Matter of Dhanasar** analytical framework.

Chapter 3: Preparing Your Petition

This chapter covers the steps required to prepare a successful petition for the EB-2 NIW visa, detailing the process and providing guidance to ensure that the documentation and filing meet USCIS requirements.

SECTION 3.1: REVIEW OF ELIGIBILITY CRITERIA

Before starting your petition, it is critical to thoroughly review the eligibility criteria laid out in Chapter 2. Make sure you understand each aspect and how it applies to your profile and field of expertise.

1. Demonstration of Exceptional Skill:

Demonstration of exceptional ability is one of the fundamental criteria for the EB-2 NIW petition and refers to skill or competence that is notably above average in your area of expertise. USCIS (U.S. Citizenship and Immigration Services) requires applicants to show exceptional ability that is substantially beneficial to the United States.

Here are some key points to consider when demonstrating exceptional ability:

- **Solid Evidence:**
Present concrete and solid evidence that shows your exceptional ability. This can include awards, publications, patents, innovative works, presentations, among others.
- **Impact on the Area of Expertise:**
Highlight how your skills have a significant impact on your field. This could be in terms of scientific, technological, economic, social or cultural advances.

- **Recognition from the Professional Community:**
Prove that you are recognized and respected by the professional community in which you operate. This could be through letters of support, expert testimonials, or quotes in relevant publications.
- **Comparison with Peer Professionals:**
Compare your accomplishments and skills to those of other professionals in the same field. Highlight how their contributions are distinctive and exceptional.
- **Relevance to the National Interest:**
Connect your exceptional ability to the U.S. national interest. Explain how your skills benefit the United States as a whole.

Demonstrating exceptional ability is one of the pillars for a successful EB-2 NIW petition. It is crucial to gather comprehensive documentation that illustrates your professional excellence and your positive impact on your field of expertise, thereby strengthening your eligibility for this visa.

2. Proof of National Interest:

Proof of national interest is one of the central pillars of the EB-2 NIW petition. The applicant must demonstrate that his or her professional proposal has substantial merit and that it serves the interests of the United States in a manner that warrants granting the waiver of the job offer requirement.

Here are some key aspects to understand about proof of national interest:

- **Benefits to the U.S. Economy or Society:**
 - It is crucial to show how your professional proposal will benefit the economy, society, or other important aspects of the United States.
 - This can include job creation, technological advancement, contributions to public health, scientific advances, among others.

- **Contribution to Areas of Need or Deficiency:**
 - Highlight whether your proposal meets a specific area of need in the USA, where there is a shortage of qualified professionals.
 - This can include areas with a shortage of skilled labor, such as STEM (Science, Technology, Engineering and Mathematics).

- **Affiliation with Institutions or Projects of National Interest:**
 - Demonstrate whether your proposal is related to institutions, organizations, or projects considered to be of national interest.
 - This may strengthen your case for your proposal's contribution to the overall well-being of the U.S.

- **Support from Experts and Institutions:**
 - Obtain letters of support from experts and organizations that validate the relevance and national interest of your proposal.
 - These external supports can be fundamental to strengthen your argument.

- **Connection Between Exceptional Ability and National Interest:**
 - Make a clear connection between your exceptional ability and how it serves U.S. national interests.
 - Highlight how your presence in the United States will contribute in a unique way to the country.

Proof of national interest is a critical component that must be carefully articulated in the EB-2 NIW petition. She must make it clear that her presence in the United States is of great benefit to the country, justifying the exemption from the job offer requirement.

3. Educational and Professional Background:

Educational and professional background is one of the crucial criteria for the EB-2 NIW petition. Applicants must demonstrate a background and experience that qualifies them exceptionally in their field of expertise.

Here are the key posts related to educational and vocational background:

- **Academic Qualifications:**
 - Highlight your academic qualifications relevant to your field of expertise. This can include degrees, certificates, courses, and other related credentials.

- **Significant Professional Experience:**
 - Demonstrate your professional experience, especially that which is directly related to your professional proposal in the United States.
 - Highlight projects, responsibilities, and achievements that showcase your competence and skills.

- **Contributions in the Area of Expertise:**
 - Present how your education and experience have resulted in remarkable contributions to your area of expertise.
 - This can include publications, research, innovations, awards, or any other significant contribution.

- **Connection to the U.S. Proposal:**
 - Explain how your education and experience connect directly to your career proposition in the United States.
 - Highlight how your background prepares you in an exceptional way to execute the proposal successfully.

- **Professional Recognition:**
 - Show whether your training and experience have resulted in professional recognition, such as awards, scholarships or invitations to conferences.
 - This validates their excellence and contribution to the area.

Educational and professional background is evaluated to determine if you have the skills and experience necessary to succeed in your U.S. career proposal. It is essential to present a clear and convincing narrative that highlights how your background and professional trajectory make you exceptionally qualified for the activity you intend to perform.

4. Specific Cases and Adaptation:

The EB-2 NIW petition is flexible and can be tailored for a variety of professional situations, including specific cases such as self-employed professionals, artists, or academics. It is essential to understand how to adapt the petition to ensure that it meets the needs and particularities of each case.

Here are some relevant aspects to consider for specific cases and adaptation:

- **Self-employed professionals:**
 - For self-employed professionals, it is crucial to demonstrate how your professional proposal aligns with the interests and needs of the United States.
 - Present clear evidence that your self-employed professional activity is substantially beneficial to the country.

- **Artists and Creative Professionals:**
 - Artists and creative professionals must showcase their exceptional skill and how their creations and talents contribute to the U.S. culture and art scene.
 - Highlight awards, exhibitions, publications, and recognitions to sustain your excellence in the field.

- **Academics and Researchers:**
 - Scholars must evidence their unique contribution to the field of study and how their research benefits the U.S..
 - Highlight publications, citations, fellowships, and collaborations to showcase your impact on the academic community.

- **Adaptation to the Area of Expertise:**
 - Adapt your petition considering the nature of the area of practice in the United States.
 - Highlight how your proposal aligns with the specific demands of the U.S. market.

Tailoring the EB-2 NIW petition to specific cases is critical to ensure that the particularities of each profession are adequately reflected and that the petition is persuasive and meets the program's eligibility criteria.

SECTION 3.2: COLLECTION OF SUPPORTING DOCUMENTATION

Gather all relevant documents that support your eligibility, including diplomas, certificates, awards, publications, letters of recommendation, and other evidence that demonstrates your exceptional abilities and contributions to the national interest.

1. Identification of Relevant Documents:

Identifying relevant documents is the essential first step in gathering documentation for your EB-2 NIW petition. These documents should be carefully selected to support and back up the allegations made in your petition.

Identify the documents that are most relevant to support your petition, including diplomas, certificates, awards, publications, and more.

- **Diplomas and Certificates:**
 - Include certified copies of all your degrees, undergraduate certificates, graduate certificates, specializations, and other relevant educational documents.

- **Professional Awards and Recognitions:**
 - Present documentation about awards received, professional recognitions, honors, and any other form of recognition in your area of expertise.

- **Publications and Research:**
 - Include copies or references to publications, research, articles, reports, or any academic work you have produced.

- **Patents and Innovations:**
 - Document any patents, innovations, or discoveries relevant to your area of expertise.

- **Professional experience:**
 - Present proof of your work experience, including a work letter, contracts, performance reviews, and professional references.

- **Professional Certifications:**
 - Include copies of professional certifications you hold that are relevant to your profession.

- **Other Area-Specific Documents:**
 - Identify any other documents specific to your professional field that are relevant and that can strengthen your petition.

When identifying and gathering this documentation, make sure it is complete, up-to-date, and ready to be presented as evidence of your professional excellence and significant contributions to your field.

2. Organization and Cataloguing:

Once you have identified the relevant documents, proper organization and cataloging are vital to ensure that your petition is presented clearly, effectively, and that the documents can be easily accessed during the review process.

Organize documents in a clear and organized way, creating a cataloging system that facilitates access and presentation during the petition process.

- **Create an Archiving System:**
 - Establish an organized filing system for documents, whether in physical or digital format.
 - Create folders or categories to group documents according to their nature, such as diplomas, awards, publications, etc.

- **Label and Describe:**
 - Clearly label each document according to its content and its relevance to the petition.
 - Provide a brief description to make it easy to quickly identify the contents of each document.

- **Maintain a Checklist:**
 - Create a checklist that details all the documents that will be included in the petition.
 - Mark up documents as they are organized and added, ensuring nothing falls through the cracks.

- **Scan and Back Up:**
 - If the documents are in physical format, scan them for easy sharing and preservation.
 - Back up to secure devices or the cloud to ensure document security.

- **Maintain an Updated Version:**
 - Maintain an up-to-date version of the documentation, reflecting any updates, additions, or modifications made throughout the preparation process.

Effective organization and careful cataloguing not only make it easier to file your petition but also demonstrate professionalism and diligence in preparing your case.

3. Translation and Authentication:

Proper translation and authentication of documentation are critical steps when collecting the necessary documents for your EB-2 NIW petition. It is essential to ensure that all documents are available in the required language (US English) and that translations are notarized when necessary.

- **Select Qualified Translators:**
 - Choose professional or certified translators to translate your documents into the required language, ensuring accuracy and compliance.

- **Translate Relevant Documents:**
 - Translate all relevant documents, including diplomas, certificates, awards, publications, and other evidence required for the petition.

- **Ensure Authenticity:**
 - If required, authenticate translations through a notary public or other method accepted by USCIS.
 - Ensure that notarized translations are clearly identified and ready to be presented.

- **Review and Accuracy:**
 - Verify the accuracy and fidelity of the translations, ensuring that the original meaning and context are accurately preserved.

- **Keeping Copies of Original Documents:**
 - Keep copies of the original documents in the native language, along with the notarized translations, for reference and comparison.

Proper translation and authentication ensure that evaluators can fully understand the content of the documents submitted, facilitating analysis and contributing to a successful petition.

4. Letters of Support and References:

Letters of support and references are valuable components of the supporting documentation for the EB-2 NIW petition. These letters provide outside perspectives on your skills, achievements, and professional contributions, reinforcing your eligibility.

- **Careful Selection of Senders:**
 - Choose qualified and respected individuals in your field of expertise to write the letters, such as supervisors, co-workers, or recognized experts.

- **Clear Instructions for Senders:**
 - Provide clear instructions on the content and purpose of the letters, highlighting the EB-2 NIW eligibility criteria that must be addressed.

- **Perspectives on Exceptional Ability and National Interest:**
 - Ask senders to emphasize their exceptional skills, contributions to the field of expertise, and how their presence in the U.S. is in the national interest.

- **Professional Experiences and Achievements:**
 - Ask them to describe their professional experiences, accomplishments, and relevant projects that support their proposal in the United States.

- **Sender Credentials:**
 - Ask senders to provide information about their own credentials and authority to talk about you and your career path. Here, a resume of the letter signer will always be welcome and relevant.

- **Early Collecting and Coordination:**
 - Start collecting letters of support early, allowing sufficient time for coordination and ensuring that all letters are ready before the petition is submitted.

Letters of support and references are an effective way to validate your achievements and qualifications before USCIS by offering external testimony that supports your petition.

5. Additional Specific Documents:

In addition to basic documents, in some cases, certain professions or areas of practice may require specific additional documents to strengthen the EB-2 NIW petition. These extra documents can further highlight your professional excellence and unique contributions.

- **Professional Portfolios:**
 - If you're a creative professional, consider including a portfolio with representative examples of your work, such as design projects, artwork, publications, and more.

- **Specific Professional Certifications:**
 - Depending on your field, professional certifications may be key to validating your skills and qualifications. Be sure to include copies of these certifications.

- **Specific Achievement Vouchers:**
 - If you have awards, honors, scholarships, or other special achievements, include copies or documentation attesting to those accomplishments.

- **Research Projects and Innovations:**
 - For researchers and innovators, document your research projects, case studies, technological innovations, or discoveries relevant to the field.

- **Additional Publications and Articles:**
 - If you have more relevant publications, articles, or papers that were not included in the main sections, please consider presenting them as additional documentation.

- **Peer and Expert Recommendations:**
 - Letters of recommendation from industry peers or recognized experts in the field can bolster your eligibility and contribute to your petition.

The inclusion of additional specific documents, when appropriate for your professional field, can add depth and substance to your petition, strengthening your case for the EB-2 NIW visa grant.

6. Complete Review:

Before submitting your EB-2 NIW petition, a thorough review of all documentation collected is crucial to ensure that everything is in order, complete, and ready for submission. This thorough review can prevent errors and increase the likelihood of a successful evaluation.

- **Verification of Essential Documents:**
 - Make sure that all essential documents, such as diplomas, certificates, awards, and publications, are present and properly organized.

- **Confirmation of Translations and Authentications:**
 - Verify that all translations have been done accurately and that they have been properly notarized when required.

- **Ensure Coherence and Clarity:**
 - Ensure that documentation is clear, coherent, and reports your accomplishments and experiences in an accurate and understandable manner.

- **Proofreading Letters of Support:**
 - Review letters of support and references to ensure they meet the instructions provided to senders and highlight your qualifications effectively.

- **Verification of Additional Documents:**
 - Make sure that all additional documents specific to your profession are correct, up-to-date, and relevant to your case.

- **Correction of Possible Errors:**
 - Correct any grammatical, typing, or formatting errors that may be identified during proofreading.

A thorough review ensures that your petition is filed accurately and professionally, increasing your chances of a successful and effective evaluation by USCIS.

Carefully collecting supporting documentation is crucial to ensure that your petition is robust and well-founded. The documents gathered should corroborate your claims, showing your qualifications, skills, and contributions in a clear and convincing way.

SECTION 3.3: CREATING A PROFESSIONAL PLAN OR BUSINESS PLAN

Based on your professional or business trajectory, draw up the appropriate plan - Professional Plan or Business Plan. Make sure these plans are well-structured, detailed, and aligned with the eligibility criteria.

Professional Plan:

The Professional Plan is focused on the individual's professional activities and achievements as a highly qualified professional in their area of expertise. It details exceptional skills, past and future contributions, relevant educational background, and awards or recognitions received. This plan demonstrates how the candidate is an asset to the United States due to his or her experience and expertise.

Business Plan:

The Business Plan, on the other hand, is centered on business activities. It outlines the company's structure and operations, including market analysis, growth strategies, financial projections, and how the company will contribute to the US economy. The Business Plan is particularly relevant for applicants who are involved in ventures, startups, or want to found a company in the US. The Professional Plan or Business Plan plays a crucial role in petitioning for the EB-2 NIW immigration visa to the United States. These documents detail the planning of professional practice in the country, providing accurate information about how the applicant intends to contribute to the U.S. national interest.

The immigration officer will carefully evaluate the plan submitted to understand the proposed activity plan and determine if the applicant meets the requirements of the National Interest Waiver (NIW).

A key feature of the EB-2 NIW visa is the absence of a requirement for a job offer from a U.S. company. However, this implies that it is imperative to submit, along with the plan of professional activities, a wide range of documents proving the applicant's professional qualification and their eligibility to receive the exemption from the national interest job offer (NIW).

The Professional Plan or Business Plan are essential components that enable the immigration officer to assess whether the applicant meets the strict NIW criteria. Thus, this step is indispensable for any application for this type of visa.

Next, we'll delve deeper into what the Professional Plan and Business Plan are, understand their differences and discuss how they are put together, ensuring that these crucial tools are well prepared and aligned with EB-2 NIW requirements.

Preparing a Business Plan for EB-2 NIW

The Business Plan, as its name suggests, is aimed at EB-2 eligible professionals who wish to undertake business in the United States. It is especially relevant for those who have a business plan to implement in the country.

The EB-2 NIW offers the opportunity to undertake business in the USA without the need for an investor visa, making it an attractive alternative for qualified entrepreneurs.

However, simply presenting a business plan is not enough. It is crucial to demonstrate that the company, in its proposed configuration, meets the national interest requirements.

To meet the first criterion, it is possible to argue that the company will have a positive impact on the field of operation, demonstrate its economic impact on the region in which it will be established or how it will contribute to the creation of jobs for American citizens.

The second requirement focuses on the petitioner's professional qualifications to carry out the proposed plan. The Business Plan must demonstrate the professional's preparation and experience to carry out the business plan successfully.

Finally, the Business Plan already meets the third criterion, since it is not possible to have a job offer when the applicant is starting their own business.

It is essential to emphasize that this explanation is a simplification to make it easier to understand the Business Plan in the context of the EB-2 NIW. Each situation requires a detailed analysis by a lawyer to ensure the success of the process.

The Business Plan is an extensive document that addresses market analysis, target audience profile, investment and economic return estimates, as well as information proving that the applicant is qualified to succeed with the proposed venture.

Here are some crucial aspects that the Business Plan should address:

1. Market Analysis:

- Identification and analysis of the target market in the US.
- Consumer characteristics and behaviors.
- Competition and market positioning.

2. Target Audience Profile:

- Detailing the demographic and psychographic profile of potential customers.
- Strategies to reach and conquer this audience.

3. Financial Estimates:

- Comprehensive financial projections, including revenue, expenses, and cash flow.
- Realistic assessment of startup and operational costs.

4. Marketing Strategies:

- Marketing Tactics and Channels to Promote the Business in the US.
- Strategies to increase visibility and market share.

5. Implementation Strategies:

- Detailed plan for how the company will be established and operated in the US.
- Description of the steps for effective execution of the business plan.

6. Economic Return and Investment:

- Assessing the potential return on investment.
- Discussion about the economic viability of the project.

7. Petitioner's Professional Qualifications:

- Highlight the applicant's education, experience, and skills that enable them to successfully conduct the business.
- Evidence of technical and managerial capacity to implement the proposed plan.

8. Management Strategies:

- Description of the organizational structure.
- Breakdown of key management functions.
- How operations will be coordinated and overseen.

9. Risk and Contingency Strategies:

- Identification of the main risks that the company may face.
- Contingency plans to mitigate these risks.
- Strategies for Dealing with Challenges and Adversity.

10. Economic Impact on the Region:

- Analysis on how the company will contribute to the local economy.
- Estimates on job creation and economic development.
- Demonstration of how the venture will positively impact the community.

11. Growth and Expansion Strategies:

- Plan for expansion and sustainable growth of the business.
- Identifying opportunities to expand reach and offering.
- Strategies for entering new markets or offering new products/services.

12. Presentation of Supporting Documents:

- Inclusion of data, graphs, market research, sector studies, and other evidence.
- Documents that support the financial projections and feasibility of the business.

The Business Plan should be detailed, realistic, and compelling, providing a clear picture of how the company will be operated, its impact on the market, its growth strategies, and how the petitioner is qualified to lead this endeavor. Each section should be grounded in solid data and accurate analysis.

Drafting a Professional Plan for the EB-2 NIW

The Professional Plan is the planning presented in EB2-NIW cases of professionals who do not intend to open a company in the United States. It is aimed at people seeking to enter the American job market.

The Professional Plan may also bring arguments that prove that the petitioner meets all the requirements in order to demonstrate that the proposal, its "proposed endeavor", has substantial merit and national interest.

An argument that can be used for the first prong is the contribution that the professional can bring to the area, due to their above-average qualifications. The arguments, in this case, vary greatly according to the area of expertise.

Another argument widely used in the Professional Plan is that there is a deficit of qualified professionals in that area of work in the United States (shortage). Thus, this foreigner could occupy vacancies that are open due to the lack of this workforce.

But beware! This argument, of the deficit of professionals, in isolation, has no support for the approval of the visa of national interest.

The qualifications of the professional are presented to fulfill the second and third "prong".

If your profession requires a license in the United States, there are some paths that can be chosen, but it is always good to note that there is no requirement for a license in the USA for the professional to apply for a visa through the NIW.

Thus, it is possible to obtain the license before applying for the EB2-NIW, but this is not always feasible for some professionals. In addition, there are fields in which obtaining a license requires years of study on American soil.

So, the path that can be adopted is to present that the professional has already started the process of obtaining the license. That is, that he has already passed a test, or is enrolled in a preparatory course for it, or even that he has already taken the extra subjects required in a diploma equivalence process, for example.

In any case, understand that the process of obtaining your professional license can YES, be done in parallel with the EB2-NIW application.

Therefore, the Professional Plan must also demonstrate that this professional will contribute positively to the country and that he has essential and necessary qualifications for this.

Usually, a Professional Plan is used for research professionals, who intend to enter the job market to continue their work in laboratories, etc. or professionals whose investment to undertake is very high, above their financial capacity or even to attract investments, such as airline pilots who would require a very high investment to set up an air taxi company, for example, justifying its hiring by an airline. In short, the Professional Plan, in a way, goes "against" the NIW proposal, which dismisses an employer, requiring a subsequent hiring to apply the proposal. So the choice between one and the other must be very well evaluated by an immigration lawyer, given the academic and professional training of the applicant x plan proposal x job market.

Crafting an effective EB-2 NIW Professional Plan requires a structured and detailed process. Here are the steps to put together a successful Professional Plan:

1. Detailed Research:

- Conduct comprehensive research on your professional field in the United States.
- Identify gaps in the job market and opportunities that your skills can fill.

2. Identifying Relevant Qualifications and Experience:

- Highlight your relevant qualifications, work experiences, and achievements.
- Highlight projects, publications, awards, certifications, or any other element that proves your professional excellence.

3. Clear Plan Structuring:

- Break down the plan into well-defined sections, including introduction, description of qualifications, proposed contribution to the field, and license process, if applicable.
- Ensure that the structure allows for fluent reading and easy comprehension.

4. Persuasive Argumentation:

- Use strong arguments that evidence your contribution to the U.S. national interest.
- Highlight how your exceptional skills can solve problems and meet market needs.

5. Explanation of the Shortage of Professionals:

- Address the shortage of skilled professionals in your field in the U.S. and how you can fill that gap.
- Show that your presence in the job market is vital to meet existing demand.

6. Highlight in Professional Qualifications:

- Present your academic qualifications, professional experience, relevant skills and knowledge.
- Make clear connections between your qualifications and the contribution you can make.

7. Case Study or Concrete Examples:

- Include case studies or examples of situations where your skills were crucial and benefited a project or organization.
- Use real cases to illustrate your potential contribution in the U.S..

8. Review and Adjustments:

- Reread and revise your Professional Plan carefully.
- Make adjustments to ensure clarity, consistency, and accuracy.

Remember, the goal is to create a persuasive and compelling Professional Plan that demonstrates how your exceptional skills will contribute to the U.S. national interest and how you fit into the U.S. job market.

SECTION 3.4: PREPARATION OF LETTERS OF SUPPORT AND RECOMMENDATION

Request letters of support and recommendation from colleagues, supervisors and other experts in the field. These letters offer a valuable outside view of your skills, accomplishments and professional contributions, reinforcing the validity and merit of your application.

Identifying Suitable Senders:

Identifying appropriate senders is a crucial step in preparing letters of support and recommendation for the EB-2 NIW petition. Senders should be people who are credible and knowledgeable about your professional skills and achievements. Here are detailed guidelines for identifying suitable senders:

1. Qualified Professionals in Your Area of Expertise:

- Choose individuals who are experts in their professional field, with in-depth knowledge and recognition in the community.

2. Reputable Supervisors and Coworkers:

- Consider your past or current supervisors, as well as coworkers with whom you have collaborated in a meaningful way.

3. Peers from Other Recognized Organizations:

- If possible, include recommendations from professionals from other recognized organizations in your area of expertise.

4. Renowned Industry Experts:

- Seek letters from recognized experts and leaders in your industry or professional field.

5. Reputable Academics or Researchers:

- If applicable, include distinguished scholars, researchers, or professors who are familiar with your academic achievements and contributions.

6. Professional Collaboration Partners:

- If you've collaborated with professionals on projects or research, consider asking these partners for recommendations.

7. Senders with International Credibility:

- If you practice internationally, include recommendations from internationally recognized professionals in your field.

8. Senders with Working Knowledge:

- Choose senders who have working knowledge about your skills, achievements, and impact on the professional field.

By selecting suitable senders, you ensure that letters of support and recommendation accurately reflect your exceptional ability and valuable contributions to the practice area, thereby strengthening your EB-2 NIW petition.

Communicating EB-2 NIW Criteria:

Clearly communicating the EB-2 NIW (National Interest Waiver) criteria to the senders of letters of support and recommendation is critical to ensuring that they can accurately and effectively address the essential aspects necessary for a successful petition. Here is detailed guidance on how to communicate these criteria:

1. Explain the EB-2 NIW Concept:

- Introduce the EB-2 NIW and explain that it is a visa category that seeks out individuals with exceptional skills and whose presence in the US is in the national interest..

2. Highlight EB-2 NIW Key Criteria:

- Explain the fundamental criteria, such as exceptional ability, contribution to the area, and demonstration of national interest, detailing each of them.

3. Exceptional Skill:

- Specify that exceptional ability must be proven through substantial evidence of success in the professional field, above average.

4. Contribution to the Area:

- Emphasize that it is necessary to demonstrate significant contributions to the area of expertise and how these contributions positively impact the profession.

5. Demonstration of National Interest:

- Explain that the applicant's presence in the U.S. must be in the national interest, promoting substantial benefits to the country's society, economy, or culture.

6. Encourage a Detailed Approach:

- Encourage submitters to provide concrete examples and evidence that support each criterion, demonstrating how the applicant meets these requirements.

7. Ask for Specific References:

- Ask them to make specific references to the projects, accomplishments, and qualities that attest to exceptional ability and impact in the area of expertise.

8. Provide Content Guidance:

- Offer suggestions on the structure and content that can be included in the letter, such as professional achievements, awards, publications, among others.

Ensuring that senders fully understand the EB-2 NIW criteria is essential to obtaining letters of support and recommendation that highlight their accomplishments and their contribution to the area, thereby bolstering their petition.

Detailed Guidance for Senders:

Providing detailed guidance to the senders of letters of support and recommendation is crucial to ensure that they produce relevant and persuasive content that meets the EB-2 NIW criteria. Here is detailed guidance that can be offered:

1. Introduction and Relationship:

- Start the letter with a brief introduction about who the sender is, what your relationship is with the applicant, and why you are qualified to write the recommendation.

2. Know the EB-2 NIW Criteria:

- Familiarize yourself with the EB-2 NIW criteria, especially regarding exceptional ability, contribution to the area, and demonstration of national interest.

3. Highlight the Applicant's Exceptional Skills:

- Present clear examples and evidence of the applicant's exceptional abilities, highlighting above-average achievements and professional recognitions.

4. Address Significant Contributions to the Area:

- Describe how the candidate has contributed significantly to the area of expertise, mentioning projects, research, or innovations that have had an impact.

5. Demonstrate National Interest in the Applicant's Presence in the U.S.:

- Explain why the applicant's presence in the U.S. is in the national interest, highlighting the benefits they can bring to the professional community and/or the economy.

6. Offer Examples and Achievements:

- Provide concrete examples of the applicant's professional achievements, such as publications, awards, patents, project leadership, and more.

7. Include Relevant Personal and Professional Qualities:

- Comment on the candidate's personal and professional characteristics that make them exceptional, such as work ethic, leadership skills, integrity, among others.

8. Conclude with a Strong Recommendation:

- Conclude the letter by strongly recommending the applicant for the EB-2 NIW, underscoring their exceptional ability and the importance of their presence in the U.S..

9. Contact for More Information:

- Offer contact information in case the immigration officer needs further clarification on the recommendation.

By offering detailed guidance, you ensure that senders can write impactful letters of support that align with the EB-2 NIW criteria, thereby bolstering the applicant's petition.

Perspectives on Exceptional Ability:

When requesting letters of support and recommendation for the EB-2 NIW petition, it is important to guide submitters to offer solid perspectives on the applicant's exceptional ability. Here are some detailed guidelines for this:

1. Contextualize the Applicant's Abilities:

- Ask to describe the specific abilities and competencies that make the applicant stand out in their area of expertise.

2. Exemplify with Notable Achievements:

- Ask them to highlight specific achievements of the applicant that highlight their exceptional ability, such as awards, successful projects, relevant publications, among others.

3. Highlight Positive Impact:

- Encourage explaining how the applicant's abilities have positively impacted their professional field, whether by improving processes, contributing to technological advancements, or raising the industry standard.

4. Comparison with Peers:

- Ask to make a comparison of the applicant's ability with other professionals in the same area, demonstrating how he stands out and exceeds the average.

5. Involvement in Complex Projects:

- If the applicant has participated in complex or challenging projects, encourage them to provide details about their contribution and how their abilities have been instrumental in the success of those projects.

6. Innovation and Creativity:

- Guide to address the applicant's ability to think innovatively, creatively, and outside the box, highlighting examples of original ideas and creative solutions they have proposed.

7. Peer Feedback and Recognition:

- If possible, ask to include feedback from coworkers or formal acknowledgments that validate the applicant's exceptional ability.

8. Highlight Experience and Professional History:

- Guide to relate the applicant's exceptional abilities to their extensive professional experience and track record of accomplishments.

Encouraging perspectives on the applicant's exceptional ability in specific and concrete terms will allow letters of support to present a clear and compelling view on their exceptionality.

Solid Argument for the National Interest:

In order to obtain effective letters of support and recommendation that present a strong argument for the national interest in the candidate's presence in the US under the EB-2 NIW, it is essential to guide senders to approach this aspect in a precise and convincing way. Here are detailed guidelines to ensure sound argumentation:

1. Highlight the previous contributions:

- Request that they mention past contributions of the candidate that have benefited the area of expertise in the US, such as process improvements, job creation or technological advances.

2. Relate to current or future needs:

- Orient to connect the applicant's abilities and experiences with current or future US needs in their professional area.

3. Reference National Policies and Strategies:

- Encourage reference to US national policies or strategies that emphasize the importance of progress in the applicant's area of expertise.

4. Address Contribution to Economy and Innovation:

- Ask them to highlight how the candidate's presence in the US can boost the local economy, generate jobs or foster innovation.

5. Respond to Specific Demands of the Professional Community:

- Encourage you to provide examples of how the candidate’s presence can meet specific demands of the US professional community.

6. Involvement in Projects of National Interest:

- If applicable, advise to mention whether the applicant is involved in projects that have a direct impact and relevance to the national interest.

7. Reference Strategic Partnerships and Collaborations:

- If the candidate has partnerships with strategic organizations in the US, encourage them to mention how these collaborations promote the national interest.

8. Point out benefits for society:

- Advise to describe how the applicant's activities and contributions benefit U.S. society, whether through education, health, the environment, or other areas.

9. Use Relevant Data and Statistics:

- Suggest that they include statistical data or quantitative information that supports the argument about the benefit to the national interest.

By offering detailed guidance, you ensure that the letters of support and recommendation make a robust case for the national interest in the applicant's presence in the U.S., thereby strengthening the petition.

Early Collection and Coordination:

Advance collection and coordination of letters of support and recommendation are essential steps to ensure that the EB-2 NIW petition is prepared in a thorough and well-organized manner. Here are detailed guidelines for this process:

1. Identify Suitable Senders in Advance:

- Start by identifying the ideal senders and approaching them in advance so they can devote time to preparing the letters.

2. Provide Clear Guidelines and Set Deadlines:

- Clearly communicate the EB-2 NIW criteria and offer detailed guidance to ensure senders understand what is required. Establish clear deadlines for submitting letters.

3. Explain the Importance and Relevance:

- Highlight the importance of letters of support and how they will contribute to the success of the applicant's petition, highlighting the relevance of each sender.

4. Offer Templates or Letter Structure:

- Provide templates or a suggested structure for the letters, making the preparation process easier for senders.

5. Coordinate Letter's Contents:

- Make sure that the letters address different relevant aspects, such as exceptional ability, contribution to the area, and national interest.

6. Establish Constant Communication:

- Maintain constant communication with senders to answer questions, offer additional support, and ensure they are aligned with the goals of the petition.

7. Review and Request Adjustments if Necessary:

- Ask senders to share the letters ahead of time so you can review and suggest adjustments if necessary to ensure they meet the EB-2 NIW criteria.

8. Ensure Timely Submission:

- Follow up closely to ensure that letters are submitted within the established deadline, avoiding delays in preparing the petition.

Early collection and coordination of letters of support allows for an organized process, ensuring that the letters align with the EB-2 NIW criteria and strengthen the petition effectively.

Careful preparation of letters of support and recommendation is critical to strengthening your petition, demonstrating substantial recognition and support from the professional community regarding your skills and proposal in the U.S.

A letter of recommendation is also called a reference letter, letter of support, or testimony letter. Letters of recommendation are essential in an NIW (National Interest Waiver) petition. Given that USCIS officers are rarely experts in the same area of practice as the petitioner, the only way to determine if you qualify for the standard set by immigration law (extraordinary ability, exceptional ability, with the right to waiver of a labor certification) is by looking at objective evidence presented. Evidence includes, but is not limited to, articles, publications, memoranda, expert testimonials, citations, rewards, and letters of recommendation/reference.

A good letter of recommendation can be decisive in your petition, and the drafting of these letters requires a good understanding of USCIS regulations and immigration law, as the more it is directed to the regional and/or national aspects of the geographic area of your proposal, as well as the impact of your proposal within your area of practice, by demonstrating your accomplishments and how they may impact your future or current actions, the greater the chances that this letter will be considered as a reference to your final proposal to the NIW.

USCIS and the AAO continue to point out that the NIW standard, unlike EB1-A, is a flexible standard. In other words, there is no requirement for a minimum number of articles and citations. While frequent citations can certainly bolster a researcher's claim to have influenced a field, the lack of frequent citation is not an impediment to eligibility when there is other objective evidence of the petitioner's influence. Similarly, merely being summoned substantially does

not in itself establish the petitioner's eligibility for the NIW. Original and significant contribution to the field is essential consideration for USCIS to decide on an NIW case, and in this way, it is clear that establishing the petitioner's contribution relies heavily on letters of recommendation. Therefore, the list of people who write your letters of recommendation and the content of these letters are essential to establish your substantial contribution in your area of expertise.

Many people confuse letters of recommendation/reference letters for the I-140 petition with those for advanced education. Typically, a letter of recommendation for graduate school or doctoral program is a detailed discussion, by a faculty member, of the personal qualities, accomplishments, and experiences that make the candidate unique and perfect for the programs to which they have applied. However, for the NIW the letters of recommendation/letters of reference for the I-140 petition focus on the alien's influence and contribution to the field of the endeavor. They are not necessarily from people who know them personally or in depth. But, rather, that independently and impartially they were present or were users/clients of their contracts as a professional.

Generally, individuals recognized as authorities or experts in the petitioner's field of expertise are given greater weight as a letter of recommendation writer for the NIW as they are considered to have more authoritative opinions about the petitioner's experience/background.

Along with the NIW letter of recommendation, a short resume on the author of the letter, highlighting their academic background and professional experience, or even a summary statement of their professional history, setting out the author's qualifications for judging the petitioner's work, is recommended. NIW testimony letters from non-distinguished colleagues or former college instructors are more subject to immigration officer scrutiny than letters submitted by high-level officials of large, recognized organizations.

In addition to being an expert in the field of your venture, it will be best if the person writing you an NIW letter of recommendation knows about your work, research, and/or contribution enough to specifically address them in the letter of recommendation. Therefore, someone who has a prominent reputation in their field of expertise will be a better candidate than someone in their

immediate circle of acquaintances. In other words, a perfect candidate will be an expert, independent, who knows or identifies your contribution.

While it is almost universal practice for NIW reference letters to be drafted by the petitioners themselves or their attorneys so that the recommender will only review and sign, USCIS adjudicators hope otherwise. This creates a major problem for your NIW petition if the letters of recommendation/reference submitted are substantially similar. Some cases in NIW petitions suggest that these letters are considered suspicious and the merits of the letters are significantly disregarded.

So, try your best to make the letters look different by making basic variations such as different font, shape, or using more advanced techniques such as different writing styles, sentence structures, tones, and defense approaches. And always remember that there will be someone evaluating everything you presented. The worst-case scenario is to have the same grammatical error in every letter of recommendation/reference.

We know that many people don't have the time, inclination, or even ability to write a good letter of recommendation, so that alone justifies the fact that you present an outline for the recommender to review and sign. But some points must be observed, precisely to avoid the problem presented in the paragraphs above: only put the data and information regarding the works, research, projects and everything related to your NIW proposal and that are directly related to the area of expertise of the person who will sign your letter. Or if you are an independent consultant, specify all the details of your achievements so that they have enough material to assess their importance and relevance.

It is worth remembering that you need to keep the focus of these relevance's for your project within the USA. That is, you need to "transport" your experience into your NIW proposal. Create an outline with specific areas so that the evaluator/supporter can include their resume summary, attest/testify to their experience, and conclude with a recommendation, based on their contributions within the country where their accomplishments were made, to the U.S. national interest. This final point requires that you yourself be able to present how your contribution may be relevant to the geographic and/or area of operation of your proposal for the USA.

And remember: each letter needs to be unique and personal, bringing distinct elements of each of your achievements/contributions to the eyes of those who evaluate/support you.

SECTION 3.5: ORGANIZATION AND REVIEW OF DOCUMENTATION

Organize all documentation in a clear and concise manner, ensuring that nothing essential is left out. Thoroughly review each document to avoid errors or omissions.

This section is crucial to ensure that all documents submitted in the petition comply with the requirements and criteria of the EB-2 NIW, a national interest visa category.

Organizing and carefully reviewing the documentation is essential for the petition to be successful. A well-organized and reviewed application demonstrates professionalism and seriousness, which can positively influence the immigration officer's decision.

1. Initial Organization:

Start by organizing all documents in a separate folder system or digital files, according to relevant categories, such as proof of exceptional ability, contribution to the field, and national interest.

Initial Organization refers to the process of establishing an organized structure for all documents that will be included in the EB-2 NIW petition. This is essential to ensure that the petition is filed efficiently and meets all requirements. Here's a more detailed explanation:

- **Identification of Required Documents:** Start by identifying all of the documents that will be required for your EB-2 NIW petition. This includes proof of their exceptional ability, contributions to the field, and proof of national interest. Create a complete list of these documents.

- **Organization by Categories:** After identifying the necessary documents, classify them into logical categories. For example, you may have one category to prove your exceptional ability, another to evidence your previous contributions in the area, and another for documents related to the national interest. This helps to organize documents clearly and makes them easier to review.
- **Document Numbering:** Assign numbers to each document according to your checklist. For example, the first document proving exceptional ability might be numbered "Document 1." This helps with cross-referencing and ensures that no documents are omitted.
- **Document Storage:** For physical documents, keep copies organized in identified folders or envelopes. Make sure that each folder is clearly labeled with the category name and corresponding document number. For digital documents, create folders in your file system with descriptive labels, such as "Proof of Ability" and "Previous Contributions".
- **Detailed Checklist:** Create a detailed checklist that lists all the documents required for the petition. This list should include clear descriptions of each document and its purpose. This list is a crucial tool to ensure that no document is forgotten.

Initial organization is a process that lays the groundwork for the effective preparation of an EB-2 NIW petition. It ensures that all documents are ready for review and submission, which in turn helps to increase the chances of success during the immigration process.

2. Requirements Verification:

Make sure that each document meets the specific requirements of the EB-2 NIW petition. This includes the validity of dates, authentication, translations, and any other relevant requirements.

Requirements verification is a critical step in ensuring that your petition meets all of the necessary criteria for the EB-2 NIW. Here are the main guidelines:

- **Compliance with the EB-2 NIW Criteria:** Ensure that each document included in the petition complies with the criteria set forth for the EB-2 NIW. This involves meeting the requirements of exceptional ability, contribution to the area, and national interest.
- **Validity of Dates and Deadlines:** Make sure the dates on your documents are up-to-date and within the allowed timeframes. For example, make sure that diplomas, certifications, and reference letters are not expired.
- **Authentication and Translation:** If any document is in a language other than English, and is authenticated in its country of origin, by a notary's office, for example, make sure it has been properly translated and has its authentication properly translated. This is essential for the immigration officer to understand the content properly. Translations do not need to be sworn, but only certified that they have been translated by a translator who is fluent in English.
- **Relevance and Relevance:** Make sure all documents included are relevant to your EB-2 NIW petition. This means that each document must contribute directly or indirectly to meeting the criteria of exceptional ability, contribution to the area, and national interest.
- **Excluded Documents:** Delete any document that is not relevant or necessary to the petition. Unnecessary documents can complicate the review and make the process more difficult.

Requirements verification helps ensure that your petition complies with EB-2 NIW guidelines and that all documents are ready for review by the immigration officer. This is key to increasing the chances of success during the immigration process.

3. Checklist:

Create a detailed checklist that enumerates all the documents required for the petition, along with a brief description of its contents.

A checklist is an essential tool to ensure that all necessary documents and requirements are properly met during EB-2 NIW petition preparation. Here are the key guidelines related to a checklist:

- **Creating the Checklist:** Start by creating a detailed list of all the documents and requirements needed for the petition. This can include proof of exceptional ability, contributions to the area, and national interest. The list should be comprehensive and specific.
- **Document Description:** For each item on the checklist, include a clear description of the required document. This helps to avoid ambiguity and ensures that you know exactly what needs to be presented.
- **Order and Numbering:** Organize the checklist in a logical order that matches the organization of your documents. For example, if you've grouped your documents by category (such as exceptional ability, contribution, and national interest), the list should follow that same order. Also, assign numbers to each item in the list for easy cross-referencing.
- **Completion Marks:** As you gather and prepare each document, mark the corresponding item in the checklist as "done." This helps to track progress and ensure that nothing is omitted.
- **Updates and Revisions:** The checklist should be reviewed regularly to ensure that all documents are up-to-date and compliant with the requirements of the EB-2 NIW. Make adjustments as needed.
- **Quick Reference:** The checklist serves as a quick reference during the preparation and review process. It helps prevent the omission of essential documents.

A well-crafted checklist is a crucial tool to ensure that your EB-2 NIW petition is complete and meets all requirements. It provides clarity and organization, making the preparation and review process easier.

4. Content Review:

Carefully review the content of each document, ensuring that it is clear, accurate, and relevant to the EB-2 NIW criteria. If there are inaccuracies or inconsistent information, make the necessary corrections.

Content review is a critical process to ensure that all documents and information included in the petition are correct, relevant, and well-presented. Here are the main guidelines related to this process:

- **Accuracy Check:** Thoroughly review all documents to ensure that the information is correct. This includes dates, names, identification numbers, and other details. Any mistake can adversely affect your petition.
- **Relevance and Relevance:** Make sure that each document you include is relevant to your EB-2 NIW petition. All documents must contribute directly or indirectly to meeting the criteria of exceptional ability, contribution to the area, and national interest.
- **Clarity and Coherence:** Make sure the language used in documents is clear and cohesive. Avoid excessive technical jargon that may be difficult for the immigration officer to understand. Make sure the narrative is cohesive and logical.
- **Formatting and Style:** Ensure that the formatting of documents complies with the guidelines. Use a clear and professional writing style. This includes legible fonts, proper spacing, and visual organization.
- **Solid Evidence:** Make sure that all evidence presented is solid and backs up your claims. This can include certificates, awards, publications, testimonials, among others. Documents should be reliable and convincing.
- **Comprehensive Conclusion:** Check to see if your petition includes a comprehensive conclusion that summarizes the key points of your eligibility for the EB-2 NIW. This helps the immigration officer quickly understand why you meet the criteria.

- **Third-Party Review:** It is highly recommended that you have an experienced immigration attorney or a professional with experience in EB-2 NIW petitions review. A third-party review can identify errors or areas of improvement that may go unnoticed.

Content review is a crucial step that aims to ensure the quality and effectiveness of your EB-2 NIW petition. A meticulous review process can significantly increase your chances of success during the immigration process.

5. Consistency in Letters of Support:

Check that the letters of support and recommendation are consistent with the information presented in the other documents. Make sure they emphasize the applicant's exceptional ability and contribution to the national interest.

Maintaining consistency in letters of support is crucial to ensure that your petition is cohesive and compelling. Here are the main guidelines related to this aspect:

- **Content Standards:** Letters of support should follow a consistent pattern in terms of content. This means that all letters must address the same criteria, such as exceptional ability, contribution to the area, and national interest.
- **Aligned Statements:** Letters of support should include statements that align with the overall narrative of your petition. They must reinforce the qualifications and contributions you allege in your petition.
- **Testimonials from Supporters:** It is important for supporters to provide testimonials that are consistent with the information provided in their petition. They must back up their claims solidly.
- **Writing Style:** Maintain a consistent writing style in letters of support. This includes using professional language, avoiding contradictions, and ensuring that all letters follow a similar structure.

- **Approach to Criteria:** Letters of support should specifically address how you meet the EB-2 NIW criteria. Each supporter must explain why they consider their qualifications exceptional and how their contribution is in the national interest.
- **Third-Party Review:** It is advisable to have letters of support reviewed by a third party, such as an immigration attorney or an experienced EB-2 NIW petition professional. This can help ensure that the letters align with your petition strategy.
- **Consistency in Formatting:** In addition to the content, the formatting of the letters of support should also be consistent. This includes elements such as the letters' header, signature, date, and overall format.

Maintaining consistency in letters of support is key to building a solid and compelling case during the immigration process. This helps the immigration officer clearly understand why you meet the EB-2 NIW criteria.

6. Protection of Personal Data:

Ensure that any sensitive or unrelated personal information to the petition is protected and not included in the documents.

The protection of personal data is an important consideration when preparing an immigration petition, as it involves personal and sensitive information. Here are the main guidelines related to this aspect:

- **Confidentiality:** Ensure that all personal and sensitive information included in the petition is treated with proper confidentiality. This includes data such as identification numbers, medical history, financial information, and any other personal information that is required.
- **Access Control:** Limit access to personal information to only authorized persons involved in the petition preparation process. This helps reduce the risk of information leakage.

- **Secure Storage:** Keep personal information stored securely. For physical documents, use locked cabinets or safes. For digital documents, protect them with proper passwords and security systems.
- **Secure Deletion:** When it is no longer necessary to keep personal information, be sure to delete it securely, either through destruction of physical documents or deletion of digital files.
- **Written Authorization:** If necessary, obtain written authorization from the parties involved to collect and use your personal information. This is particularly important for reference letters and testimonials.
- **Legal Compliance:** Be aware of the relevant personal data protection laws in your jurisdiction and comply with all applicable regulations.
- **Encryption and Online Security:** If you share personal information through electronic means, make sure that the communication is secure and encrypted to protect the data during transfer.

The protection of personal data is crucial not only for legal reasons, but also to ensure the privacy and security of the information of everyone involved in the immigration petition. Complying with data protection best practices is essential throughout the petition preparation process.

7. Third-Party Review:

Consider having a third-party reviewer (such as an immigration attorney) review all documents to identify any potential errors or omissions.

Third-party review plays a crucial role in ensuring the quality and effectiveness of your EB-2 NIW petition. Here are the main guidelines related to this process:

- **Experienced Professional:** It is highly recommended that you involve an experienced immigration attorney in reviewing your petition. Attorneys who have experience in EB-2 NIW petitions understand the specific criteria and requirements of this type of visa.

- **Professionals in the Same Field:** If possible, involve professionals or experts in the same field as you. They can provide valuable insights into the relevance and accuracy of the information included in the petition.
- **Detailed Review:** Third-party review should be detailed and thorough. This involves verifying all documents, statements, letters of support, and evidence to ensure that they comply with the EB-2 NIW criteria.
- **Constructive Feedback:** Reviewers should provide constructive feedback on areas that can be improved in the petition. This can include suggestions for improving the clarity, cohesion, and strength of the case.
- **Consistency Check:** Reviewers should ensure that all parts of the petition, including letters of support, affidavits, and documents, are consistent and align with the overall strategy of the petition.
- **Legal Verification:** An immigration attorney will review the petition from a legal perspective to ensure that all requirements are met and that there are no legal issues.
- **Compliance with Deadlines:** Ensure that the third-party review is completed within the established deadlines to avoid delays in the immigration process.

Third-party review is critical to increasing the chances of success of your EB-2 NIW petition. Experienced professionals can identify errors, improve the quality of documentation, and strengthen your immigration case.

8. Backup of Documents:

Make backup copies of all documents to avoid accidental loss of crucial information.

Backing up documents is a key practice to ensure that your information and evidence are safe and accessible throughout the immigration process. Here are the main guidelines related to this aspect:

- **Physical and Digital Copies:** Make both physical and digital copies of all relevant documents. This includes letters of support, evidence of exceptional ability, contribution to the area, and national interest, as well as any other necessary documentation.
- **Secure Storage:** Store physical copies of documents in a secure location, such as an archive folder or a safe. Make sure they are protected from damage such as moisture or fire.
- **Document Scanning:** Scan all documents to create digital copies. This facilitates quick access and electronic sharing if needed.
- **Cloud Storage:** Consider storing digital copies on secure cloud storage services such as Google Drive, Dropbox, or Microsoft OneDrive. This provides access from anywhere with an internet connection.
- **Folder Organization:** Maintain a clear organization of digital copies into named and categorized folders. This helps you locate documents quickly when needed.
- **Password Protection:** If you store documents on digital devices or services, protect them with strong passwords. This helps keep sensitive information safe.
- **Regular Update:** Be sure to keep backup copies up-to-date as new relevant documents or information are added to the petition. This prevents data loss or missing essential information.
- **Backup Redundancy:** Consider having a backup copy of the digital copies on an external storage device, such as an external hard drive. This provides an additional layer of security.
- **Backup Documentation in Petition:** In your petition, you may mention that you have made a backup of all relevant documents, indicating organization and backup storage as a standard practice.

Backing up your documents is an important precaution to ensure that you have quick access to crucial information during the immigration process. Additionally, it helps maintain the security and integrity of your evidence.

9. Deadlines and Delivery:

Make sure you are aware of the deadlines for submitting the petition and have a clear plan for the delivery of the documents.

Managing deadlines and delivery is essential to ensure that your petition is filed in accordance with immigration regulations and within the established deadlines. Here are the main guidelines related to this aspect:

- **Deadline Calendar:** Create a detailed calendar that lists all relevant deadlines throughout the petition preparation and submission process. This includes dates for document collection, reviews, translations, signatures, and more.
- **Evaluation of Deadlines:** Carefully evaluate the deadlines set by immigration authorities, such as USCIS (U.S. Citizenship and Immigration Services). Make sure you understand the specific deadlines for the EB-2 NIW and any changes that may occur.
- **Advance Preparation:** Start the petition preparation process early. This allows sufficient time to collect all documents, review them, obtain translations, request letters of support, and have them reviewed by a third party.
- **Document Checklist:** Keep a detailed checklist of all the documents required for the petition. Mark each item as it is collected and reviewed.
- **Communication with Third Parties:** If you are working with an immigration attorney, translators, or other professionals, be sure to maintain clear and regular communication about deadlines and deliverables.

- **Submit Early:** Submit your petition early in advance of the deadline to ensure it arrives on time. Take into account postal service or delivery processing time.
- **Delivery Confirmation:** Request a delivery confirmation from the postal or delivery service to make sure your petition has been received by immigration authorities.
- **Status Monitoring:** After submission, regularly monitor the status of your petition to ensure that it is progressing as expected.
- **Proactive Action:** If there are any delays or unexpected issues, take proactive steps to address them and keep the process on track.
- **Consult with an Immigration Lawyer:** An experienced immigration lawyer can provide guidance on specific deadlines, help avoid delays, and ensure that all requirements are met.

Managing deadlines and delivery effectively is critical to a successful EB-2 NIW petition. Keeping an eye on all deadlines and maintaining clear communication with everyone involved helps you avoid problems and ensure that your petition is processed efficiently.

10. Physical and Digital Organization:

If you're presenting physical documents, organize them neatly into folders and keep a well-organized digital copy as a backup.

Proper organization, both physical and digital, plays a key role in the effectiveness and efficiency of the petition preparation process. Here are the main guidelines related to this aspect:

Physical Organization:

- **Filing Folders:** Utilize physical filing folders to store documents, letters of support, evidence, and physical copies of your petition. Label folders clearly and categorize them by document type.

- **Dividers:** Consider using dividers within folders to separate different sections of your petition. This makes it easier to find specific documents when needed.
- **Certified Copies:** Keep certified copies of important documents, such as academic certificates, diplomas, and letters of recommendation, in separate, protected folders.
- **Safe or Secure Place:** Store important physical documents, such as original copies of petitions and identification documents, in a safe deposit box or secure location to protect them from damage, fire, or theft.

Digital Organization:

- **Electronic Folders:** Create electronic folders on your computer or in cloud storage services for each category of documents. Name folders descriptively.
- **File Nomenclature:** Give meaningful names to files, so that it is easy to identify their contents. Use consistent naming conventions.
- **Document Scanning:** Scan all relevant documents and store organized digital copies in electronic folders. This makes it easier to access and share information.
- **Regular Backup:** Make regular backups of digital copies to external devices or cloud storage services. Make sure your backups are up to date.
- **Digital Security:** Protect your digital copies with passwords and encryption, especially if they contain sensitive information.
- **Remote Access:** If necessary, ensure that you can access digital documents from anywhere securely, using proper authentication methods.

Physical and digital organization is critical to ensuring that you can quickly locate documents and evidence, maintain information integrity, and respond promptly to requests from immigration authorities. It also helps keep your immigration process flowing efficiently.

11. List of Attached Documents:

Prepare a detailed list of all documents attached to the petition, for easy reference during the process.

The list of attached documents is a key part of the petition, as it provides an organized overview of all the materials that accompany the petition. Here are the main guidelines related to this aspect:

- **Exhaustive Documentation:** The list of attached documents should be comprehensive and list all documents and evidence being submitted as part of the petition. This includes letters of support, diplomas, certificates, resume, publications, among others.
- **Logical Order:** Arrange the list of documents in a logical order, preferably following the order in which the documents are physically attached to the petition.
- **Page Numbering:** Be consistent in the page numbering of documents and clearly indicate the number of pages for each item in the list. This helps avoid confusion and makes it easier to find specific documents.
- **Clear Descriptions:** Provide clear and concise descriptions for each document. This should include the title of the document, the date, the author (if applicable), and a brief description of the content.
- **Cross-Reference:** If there are cross-references between documents, mention them in the list of attached documents. This helps connect relevant information.
- **Evidence of Compliance with Criteria:** Ensure that the list includes documents that demonstrate compliance with all eligibility criteria for the EB-2 NIW, such as exceptional ability, contribution to the area, and national interest.

- **Signature and Date:** At the end of the list, add your signature and the date to confirm that all documents are attached and correctly listed.
- **Double Check:** Before submitting the petition, double-check that all of the documents listed are indeed attached. This helps to avoid submitting an incomplete petition.

The list of attached documents is an important part of the petition, as it provides immigration authorities with an organized overview of all the evidence presented in your case. Make sure the list is clear and complete to facilitate the processing of your petition.

SECTION 3.6: LEGAL REVIEW OF THE PETITION

Although it is not mandatory, as you can prepare and submit your case yourself, or even a specialized professional, it is always safer to consult with an immigration attorney to review your petition. They can provide important legal guidance to ensure that your application complies with laws and regulations.

At this stage, legal review plays a critical role in ensuring that your petition complies with immigration regulations and is well-presented. Here are the main guidelines related to this step:

1. Hiring an Immigration Attorney:

- **Consult with an Experienced Immigration Attorney:** It is highly recommended to hire an immigration attorney who specializes in EB-2 NIW petitions. This professional will understand the legal requirements and process in detail.

2. Petition Review:

- **Complete Petition Review:** Your immigration attorney will conduct a thorough review of all documents, forms, and evidence included in the petition. They will ensure that all eligibility criteria are met and that the petition complies with current regulations.

3. Accuracy Check:

- **Verification of accuracy and consistency:** The attorney will verify the accuracy and consistency of all information provided in the petition, including dates, page numbers, personal and professional information.

4. Letters of Support:

- **Review of letters of support:** It is very important that the letters of support are consistent with your application and within the EB2-NIW criteria with regard to the sustainability of their contents, offering the best possible support to your petition. An immigration attorney, experienced in the EB2-NIW process can be essential for a more detailed evaluation of each letter and suggest the necessary adjustments to strengthen your process.

5. Signature and Submission:

- **Signing and submission:** If you have prepared your application yourself and will submit at your own risk, as the petitioner, you will sign the entire process (including personal statements and USCIS forms) and submit it to immigration. Or if you have hired an immigration attorney to prepare, review, and/or represent you, they will sign your petition as your legal representative and attach the G-28 form (<https://www.uscis.gov/g-28>).

Legal review of the petition is crucial to ensure that all requirements and regulations are met. Hiring an experienced immigration lawyer is highly recommended, as they have the knowledge and experience to guide you through the entire process, maximizing your chances of success.

Chapter 4: Practical Aspects

The process of obtaining the EB2-NIW (National Interest Waiver) visa is complex and requires a detailed preparation of various documents and evidence that prove that the applicant meets the necessary requirements. This chapter will cover the practical aspects involved in preparing your case, including the validation of degrees, academic evaluation, expert opinion letters, letters of recommendation, business plan, or professional plan. Each of these elements plays a crucial role in demonstrating that your work is in the national interest and that you possess the qualifications necessary to contribute meaningfully to the United States.

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Chapter 5: Pathways to Permanent Residency

Permanent residency in the United States, better known as a **Green Card**, is the status that allows a foreigner to live and work legally in the country indefinitely. Not only does this status grant broad rights, such as the ability to reside permanently in the U.S., work without visa restrictions, and travel outside the country with greater ease, but it also provides the ability to apply for U.S. citizenship after meeting the time and eligibility requirements. For many immigrants, a green card represents a dream come true and an essential step toward achieving stability and security in their lives in the United States. Among the most common categories are:

- **Family Bond:** Available to spouses, children, parents, or other close relatives of U.S. citizens or permanent residents.
- **Employment:** Intended for skilled workers, skilled professionals, or investors who meet the specific criteria of the employment-based immigration categories.
- **Asylum or Refuge:** For those seeking protection in the U.S. due to persecution in their home countries based on race, religion, national origin, political opinion, or membership of a specific social group.
- **Other Special Categories:** Include humanitarian programs, Diversity Visa, and more.

Regardless of the category you choose, the process to obtain a Green Card follows two main methods:

1. **Adjustment of Status:** Aimed at individuals who are already physically present in the United States in a valid immigration status and wish to change their status to permanent resident without having to leave the country. This process is conducted by the United States Citizenship and Immigration Services (USCIS) and offers a practical alternative for those who are already living in the U.S. territory.
2. **Consular Process:** Indicated for those who are outside the United States or prefer to carry out the procedure through an American embassy or consulate abroad. In this case, the U.S. Department of

State is responsible for conducting the process until the immigrant visa is issued.

Both methods have their specific advantages and challenges, depending on the applicant's situation. Adjustment of Status is often chosen by those who are already in the U.S. and want to avoid international travel during the process. The Consular Process is the only option available for those who are outside the country or do not meet the requirements to adjust their status within the U.S. In this chapter, we will explore in detail how these two paths to obtaining permanent residency work. We will start with the **Adjustment of Status**, covering its main characteristics, requirements, and general procedures. Next, we will discuss the **Consular Process**, explaining how it applies to those who need to conduct their application outside of the United States. This overview will allow you to understand the steps involved in each method and help you make the best choice, according to your needs/immigration situation.

5.1. ADJUSTMENT OF STATUS

Adjustment of Status is the process by which an individual who is already physically present in the United States can apply to change their immigration status* to that of a permanent resident (Green Card), without the need to return to their home country for consular processing. An application for Adjustment of Status, formalized through Form **I-485**, can be filed in two ways:

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5.2. CONSULAR PROCESS

Consular processing is the process of applying for a U.S. Green Card when applying from outside the United States.

The application process for a Green Card varies depending on whether you are already in the United States or still in your home country. If you are applying from your home country, your application will go through consular processing, which simply means that it will be handled by your local U.S. Embassy or Consulate.

Consular processing is different from Adjustment of Status (AOS), which is used when applying for a Green Card from within the United States. With consular processing, you will have to wait in your home country until your Green Card is approved.

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5.3: VISA X ADMISSION CLASS X IMMIGRATION STATUS

1. Visa

What is it?

A visa is an authorization issued by a U.S. embassy or consulate abroad that allows the holder to travel to a port of entry in the United States (airport, land border, etc.) and apply for admission to the country. It is an "entry key" and does not automatically guarantee entry into the U.S.

Key features:

- The visa is stamped or attached to the passport.
- It indicates the visa category (e.g., F-1 for students, B2 for tourists) and the purpose of the trip.
- There are two main types:

1. **Nonimmigrant Visas:** For temporary stays, such as tourism, study, or temporary work (e.g., B1/B2, F-1, H-1B).
2. **Immigrant Visas:** For those who wish to reside permanently in the U.S. (e.g., IR1 for spouses of U.S. citizens, EB-2 for skilled workers).

Important:

A visa is only required to enter the U.S. Once inside the country, immigration status becomes more relevant.

2. Admission Class

What is it?

The class of admission refers to the category in which an individual is admitted to the U.S. at the time of entry. It is determined by the CBP (*Customs and Border Protection*) officer at the port of entry based on the visa presented and the traveler's stated intent.

Key features:

- The admission class is recorded on Form I-94 (electronic or physical registration), which specifies:
 - The admission category (e.g., F-1 for students, B2 for tourists).
 - The permissible period of stay in the U.S. (specific date or "D/S" – *Duration of Status*).
- Example: An F-1 visa holder will be admitted to the F-1 class if he or she is entering for the purpose of studying full-time.

Visa Difference:

The visa allows you to apply for entry, while the admission class defines the conditions of stay in the USA.

3. Immigration Status

What is it?

Immigration status refers to the alien's legal status while inside the U.S. It determines the rights and limitations of the individual during their stay, such as working, studying, or just visiting.

Key features:

- Status is assigned at the time of admission and must be maintained as per the conditions set forth by the admission class.
- Examples:
 - An F-1 student must be enrolled full-time to maintain their status.
 - A B2 tourist cannot work or study while in the U.S.
- If the conditions of the status are violated (e.g., an F-1 student stops attending classes), the individual loses legal status, even if the visa is still valid.

Differences at a glance

Aspect	Visa	Admission Class	Immigration Status
Definition	Authorization to travel to the USA	Category assigned at the entrance	Legal status within the U.S.
Issued by	U.S. embassy or consulate	CBP officer at port of entry	USCIS or CBP throughout the stay
Purpose	Allow sign-in request	Determine entry conditions	Regular legal stay
Example	F-1 visa for students	Admitted to the F-1 class	F-1 status while studying full-time

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5.4. CSPA FOR EMPLOYMENT-BASED IMMIGRANT VISAS (EB)

If you are an employment-based preference (EB) applicant, calculate your CSPA age by subtracting the number of days your petition was pending (time pending) from your age on the date an immigrant visa becomes available to you (age at the time of visa availability). However, you must remain single to qualify.

The formula for calculating CSPA is:

Age at time of visa availability - Pending time = CSPA age

Example:

You are 21 years and 4 months old when USCIS considers an immigrant visa available to you. His petition had been pending for 6 months. Calculate the age of the CSPA as follows:

21 years and 4 months - 6 months = 20 years and 10 months

Age at time of visa availability

The date on which the visa is considered available is the last of these two dates:

- The date the petition was approved; or
- The first day of the month that USCIS considers a visa available to file an application for adjustment of status based on your immigrant preference category, country of enforceability, and priority date. You should check the USCIS website to determine which of the 2 tables (Dates for Filing) of the Department of State (DOS) Visa Bulletin you should use to file an application for adjustment of status (I-485).



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5.5: VISA BULLETIN AND PRIORITY DATE

We will explain what the Visa Bulletin is and how it influences the EB-3 immigration process. We'll cover the importance of the priority date and how to determine when you can move on to the next step in the process.

To access the updated Visa Bulletin:

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

1. Visa Bulletin:

The Visa Bulletin is a monthly bulletin published by the United States Department of State. It provides information on the availability of visa numbers for the different immigrant visa categories. The categories include a variety of family and employment preferences, such as the EB-2 category, which covers professionals with advanced skills.

The newsletter is divided into different geographic areas and preference categories, such as "Family-Sponsored" and "Employment-Based." The table in Visa Bulletin shows the priority dates being processed for each category.

Let's stick here to two tables that are relevant to EB2:

Table A – Final Action Dates: which is the final date for you to have your Green Card application processed

For the Adjustment of Status (AOS) process, this is the date from which your Green Card application can be processed and once approved to issue your Green Card.

USCIS determines that the date of Table A should be used for adjustment of status requests, but when it understands that there are more visas than applicants, it will indicate in the given month, the use of Table B (Dates for Filing) for this condition.

It is important to always check which table should be used on the site: <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>

For the Consular process, this is the date from which your interview can be scheduled, as long as your process is "Documentarily Qualified" (DQ), which is a classification given to cases in which the National Visa Center (NVC) has received all the necessary information and documents.

Example of Table A, in the January 2025 Visa Bulletin

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	08NOV22	01FEB22	C	C
2nd	15MAY23	08MAY20	01DEC12	15MAY23	15MAY23
3rd	01DEC22	01AUG20	01FEB13	01DEC22	01DEC22
Other Workers	01FEB21	01JAN17	01FEB13	01FEB21	15JAN21
4th	01AUG19	01AUG19	01AUG19	01AUG19	01AUG19
Certain Religious Workers	01AUG19	01AUG19	01AUG19	01AUG19	01AUG19
5th Unreserved (including C5, T5, I5, R5, NU, RU)	C	15JUL16	01JAN22	C	C
5th Set Aside: Rural (20%, including NR, RR)	C	C	C	C	C
5th Set Aside: High Unemployment (10%, including NH, RH)	C	C	C	C	C
5th Set Aside: Infrastructure (2%, including RI)	C	C	C	C	C

Note in this example that the cut-off date for EB2, which is a second-preference, work-based visa, is **15MAY23**. That is, only EB2 processes that have their **Form I-485 pending** and whose Form I-140 has a priority date **prior to May 15, 2023**, and is duly approved, in the case of adjustment of status, can have their Green Card application judged. And only **processes that are "DQ"**, whose Form I-140 has a priority date **prior to May 15, 2023**, and is duly approved, for consular cases can have their interview scheduled.

When USCIS determines Table A as a reference over Table B, the same logic and rule is followed for the filing of Form I-485 and/or Forms I-765 and I-131 (which can only be filed with the I-485, or later, as long as you have an outstanding I-485, upon payment of fees).

Table B – Dates For Filing: which is the opening date for you to submit your Green Card application, along with the I-140, or after its approval, if it was not possible to submit it previously.

For the Adjustment of Status (AOS) process, this is the date you can submit your I-485, either with the I-140 or separately, after an approval of your petition. However, USCIS may, at its discretion, indicate Table A as the basis for submitting the I-485.

It is important to always check which table should be used on the site: <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>

For the Consular process, in theory, it would be the date that you could submit your documents to the NVC. However, in practice, this is not what has been happening. That is, even if your priority date is not current in Table B, the NVC still allows you to fill out the DS-260, pay the fees and submit your documents, which after evaluation and approval, places your case as "Documentarily Qualified" (DQ), which is a classification given to cases in which the National Visa Center (NVC) has received all the necessary information. then waiting for the deadline in Table A for your interview to be scheduled.

Example of Table B, in the Visa Bulletin of January 2025

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01JAN23	15APR22	C	C
2nd	01AUG23	01OCT20	01JAN13	01AUG23	01AUG23
3rd	01MAR23	15NOV20	08JUN13	01MAR23	01MAR23
Other Workers	22MAY21	01JAN18	08JUN13	22MAY21	22MAY21
4th	01FEB21	01FEB21	01FEB21	01FEB21	01FEB21
Certain Religious Workers	01FEB21	01FEB21	01FEB21	01FEB21	01FEB21
5th Unreserved (including C5, T5, I5, R5)	C	01OCT16	01APR22	C	C
5th Set Aside: (Rural: NR, RR - 20%)	C	C	C	C	C
5th Set Aside: (High Unemployment: NH, RH - 10%)	C	C	C	C	C
5th Set Aside: (Infrastructure: RI - 2%)	C	C	C	C	C

Note in this example that the cut-off date for EB2, which is a second-preference, work-based visa, is **01AUG23**. That is, only processes whose Form I-140 has a priority date before **August 1, 2023**, as long as it has not been denied, in case of adjustment of status, can have your Form I-485 filed (optionally, but highly recommended, to join the I-765 and I-131 forms, to avoid additional fees and gain processing time for these applications, if you wish). As stated earlier, by the "rule", however, it is not what we are seeing in "practice", this would be the reference date for the NVC to accept the payment of fees and the submission of its documents for a process whose I-140 has a priority date prior to **August 1, 2023**, and is duly approved, for consular cases; and after the approval of your documents, your process would be "DQ".

2. Priority Date:

The Priority Date is a crucial date associated with each employment-based immigration petition. This date is established when the petition is filed with USCIS or when USCIS approves the petition, depending on the category and demand for visas.

For employment-based processes that have a sponsor, such as EB3, the priority date is the date of submission of your Labor Certification (LC) to the DOL. This date is shown on the header of your Form I-140 (I-797C) filing receipt.

For employment-based processes that do not have a sponsor, as is the case with EB2-NIW, your priority date is the filing date of your Form I-140. To verify this date, accurately, check the header of the receipt sent by USCIS (I-797C), where it says "Priority Date".

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt	NOTICE DATE January 12, 2018
CASE TYPE I-130 Petition for Alien Relative	USCIS ALIEN NUMBER
PRIORITY DATE January 10, 2018	RECEIVED DATE January 10, 2018
	PAGE 1 of 1
	PREFERENCE CLASSIFICATION 201 B INA SPOUSE OF USC
	DATE OF BIRTH
	PAYMENT INFORMATION:

- Current: If the date in the Visa Bulletin table is listed as "C" to "Current," it means that there are visa numbers available for all petitions with priority dates prior to that date.

- Retrogression: If the priority date recedes, there may be a delay in the processing of petitions. This may be due to high demand in a particular category or due to annual visa limitations. When this occurs, the deadline is informed in the Visa Bulletin.

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5.6: PROCESSING FEES AND ASSOCIATED COSTS

In this section, we will provide detailed information about the processing fees associated with EB-3. You will understand how much it costs to submit the petition, schedule interviews, and what additional fees may arise during the process.

USCIS may adjust its fees from time to time, and information on forms fees can be found on the [All Forms](#) page .

You can use a [Fee Calculator](#) to determine the exact filing and biometric services fees for any form processed by a [USCIS Unit](#).

For a complete list of all USCIS fees, please refer to the [USCIS Fee Schedule](#).

In addition to USCIS fees, an EB-3 process has several other costs that need to be considered:

- attorney's fees, if you hire a;
- mentoring fees, if you decide on a;
- medical tests and vaccinations;
- travel and/or accommodation expenses;
- translations, as it is recommended not to do your own translations, even if you are fluent;

How to Pay USCIS Filing Fees

How you pay your USCIS filing fees (including biometric services fees and other fees) will depend on whether you are inside or outside the United States.

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Chapter 6: Immigration Petition (I-140)

Form I-140, known as **the Immigrant Petition for Alien Worker**, is a crucial step in the process of employment-based immigration to the United States. It is used by U.S. employers to request that a foreign worker be classified as eligible for an immigrant visa, allowing them to work and reside permanently in the country. Below, we explore the key aspects related to the I-140.

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Chapter 7: Application for Permanent Residence Registration or Adjustment of Status (I-485)

This form is used if you are present in the United States and wish to adjust your status from nonimmigrant to permanent resident upon or prior to your approval of Form I-140, provided you file in the same act, if so permitted by the Visa Bulletin (<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>).

You will also need to pay the Form I-485 filing fee.

Keep in mind that these instructions may be out of date after the publication/revision date of this eBook (specified in the table of contents), so always check the official USCIS website for the latest versions of the form and instructions. Here are the general steps for filing Form I-485:

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Chapter 8: Work Authorization (I-765)

If you wish to work in the U.S. while awaiting a decision on your adjustment of status petition (Form I-485), you can apply for an employment authorization using Form I-765.

Keep in mind that these instructions may be out of date after the publication/revision date of this eBook (specified in the table of contents), so always check the official USCIS website for the latest versions of the form and instructions. Here are the general steps for filing Form I-765:



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Chapter 9: Travel Authorization (I-131)

If you plan to travel internationally while your petition for adjustment of status is pending, (Form I-485), you can apply for a Travel Document using Form I-131.

The "Parole", as the international travel authorization is called, allows a foreign national to physically enter the United States for a specific purpose. An individual who has been "parolate" has not been admitted to the United States and remains an "applicant for admission" even when parolate.



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Chapter 10: Immigrant Visa Application (DS-260)

If you are outside of the United States and plan to apply for an EB2 immigrant visa through the consular process, you will need to fill out Form DS-260. This form is used to apply for an immigrant visa and must be completed with accurate and complete information.

Consular processing requires the applicant to travel to their home country for an immigrant visa interview, while adjustment of status allows all processing to take place in the United States. Typically, adjustment of status is the preferred option, both due to the lack of a travel requirement and because the applicant is given an appeal in the event of a refusal. However, in some cases, consular processing may be a better option.

An employment-based Consular Processing application begins when the prospective (or current) U.S. employer files an I-140 petition with USCIS requesting that, when the petition is approved, it be forwarded to the National Visa Center. Similarly, a family-based Consular Processing application begins when the requesting family member files an I-130 petition with USCIS so that when the petition is approved, it will be forwarded to the National Visa Center.

USCIS sends a notice of approval to the petitioner or attorney of record after the I-140 or I-130 is approved. USCIS submits its approved petition and notification of its approval to the National Visa Center ("NVC").

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Chapter 11: Form ETA-9089 (Application for Permanent Employment Certification)

Although this is a form that was previously only required in work-based visa processes that had an employer as the sponsor of the petition ("sponsor"), the new USCIS rule requires you to submit this form for an EB2-NIW, together with its Form I-140, since the petitioner is the sponsor of its petition.

Are you on the way to obtaining an EB-2 National Interest Waiver (NIW) and confused about whether to include work certification forms in your application package? In this part of the guide, we will clarify the requirements and discuss which forms you need to use: ETA-9089 or ETA-750.

Understanding the work certification requirement

Before we dive into the specific forms, let's first understand why work certification forms are needed in some cases. The term "NIW" means National Interest Waiver, which essentially means that you are requesting an exemption for the work certification component of the EB-2 green card application process. So, you need to include a job certification form? The short answer is yes, and here's why: In the broader context, employment-based green card applications generally consist of three main parts.

Labor Certification (PERM): This is the process where an employer sponsors you and has to prove that there are no qualified American workers available for the position you are being hired for. It involves several steps such as job description, job position, and US worker assessment applications. If successful, the Department of Labor approves the Labor Certification (LC).

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Chapter 12: Questions & Answers

In this chapter, we will present some of the key questions about the immigration process with the EB-2 National Interest Waiver (NIW) visa, with their answers.

What does NIW stand for?

NIW stands for National Interest Waiver, which is a category within the EB-2 immigrant visa, which is employment-based, second preference. An employment-based immigrant visa requires a specific job offer and a labor certification process (PERM). However, a foreign national may apply for a waiver of job offer or PERM filing for establishing that his or her admission to permanent residence would be in the "national interest" of the United States.

Does EB2-NIW lead to a Green Card?

Yes, the EB-2 NIW is a category that leads to a 10-year permanent Green Card. If your I-140 NIW petition is approved, it means that you have met the eligibility requirements for the EB-2 visa category. However, you will still need to complete the subsequent step, such as filing an application for Adjustment of Status (Form I-485) or Immigrant Visa Processing, to obtain your Green Card.

What are the differences between the regular EB2 visa and the EB2 NIW?

For an ordinary EB2 case, a U.S. employer needs to act as the petitioner in the case, and the petitioner (employer) needs to obtain a labor certificate before filing Form I-140 for the alien. The foreign worker is called a "beneficiary". The petition needs to establish the qualifications of the alien (an individual with an advanced degree or exceptional ability). For an EB2-NIW, the alien can be their own petitioner. The petition not only needs to establish the alien's qualifications under EB2, but also demonstrate that the qualifications satisfy the national interest exemption requirements (three "prongs" in the Dhanasar decision issue). Generally, it is more difficult to obtain immigration benefit under the EB2-NIW than ordinary EB2 due to the requirements for "national interest".

Who is eligible for NIW?

To be qualified for EB2 NIW, one must first meet the requirements of the EB2 (Employment-Based Immigration Second Preference) category, which can be satisfied in one of two ways:

1. EB2 "Advanced Degree":
 - a. any advanced degree beyond a bachelor's degree (including foreign Ph.D. or master's degree, or MD/MBBS) or
 - b. demonstrating that they have the "equivalent" of an advanced degree (namely, a bachelor's degree with more than five years of progressive work experience in their area of specialization).
2. Although your case under EB2 Advanced Degree would generally be a bit stronger with a Ph.D., this is not a strict requirement to satisfy EB2 Advanced Degree.
3. EB2 "Exceptional Ability" – If you do not meet either of the two requirements above, you may still satisfy the EB2 requirements by demonstrating that you satisfy EB2 exceptional ability. To do so, you will need to provide evidence that you meet at least three of the criteria listed below:
 - a. Official academic record showing that you have a degree, diploma, certificate, or similar from a college, university, school, or other educational institution related to your area of exceptional ability
 - b. Letters documenting at least 10 years of full-time experience in your occupation
 - c. A license to practice your profession or certification for your profession or occupation
 - d. Evidence that you have received a salary or other compensation for services that demonstrate your exceptional ability
 - e. Membership of a professional association(s)
 - f. Recognition for your achievements and significant contributions to your industry or field by your peers, government entities, professional or business organizations
 - g. Other comparable proof of eligibility is also acceptable.

Is a Certification of Labor (PERM/LC) required prior to EB2-NIW I-140 filing?

No. Labor certification is not required for the I-140 petition at the EB2-NIW. The EB2-NIW does not require labor certification.

Is a job offer required for EB2-NIW?

No. No job offer is required

What are the main advantages of applying to EB2-NIW?

1. No labor certification is required.
2. No offer of employment or permanent position will be required.
3. The beneficiary is allowed to make the petition himself.
4. For most cases, the Visa Bulletin is always newer than for others that require a labor certification.

Is EB2-NIW hard to approve?

A foreign national who wishes to apply for an EB2-NIW must demonstrate that his or her qualifications are significant enough for the "National Interest". The challenge for the petitioner is to establish that the exemption or waiver of a job offer will be in the national interest. Each case will be judged on its own merits. If a beneficiary is qualified, the chance of success depends largely on how the case is presented. If the evidence is relevant and well presented, and the argument is made persuasively, there is a good chance that the case will be approved. But each case is unique and approval depends on the discretion of the immigration officer and not all officers judge cases in the same way.

What standard does USCIS use to determine an EB2-NIW?

The Matter of Dhanasar decision (released on 12/27/2016) set new standards for obtaining the EB2-NIW. The AAO (Office of Administrative Appeal) considered that three "prongs" must be met to be considered of "National Interest":

1. The effort proposed by the foreigner is of substantial merit and national importance,
2. The foreigner is well placed to advance the proposal presented, and
3. On the other hand, it would be beneficial to waive the obligation of labour certification in favour of this proposal.

What are the requirements of "substantial merit" and "national importance" under the first "prong" of the Matter of Dhanasar decision? What evidence must be submitted to meet the requirements?

Substantial merit:

In the precedent case Matter of Dhanasar, the AAO stated that the merit of the undertaking may be demonstrated in a variety of areas such as business, entrepreneurship, science, technology, culture, health or education. Evidence to establish that the beneficiary's proposed venture has substantial merit consists of the following:

1. A detailed description of the proposed development and why it is of substantial merit; and
2. Documentary evidence supporting the petitioner's statements and establishing the merits.

National Importance

In determining whether the proposed development has national significance, immigration officials consider their potential prospective impact. Evidence showing that the beneficiary's offer is in the national interest, but is not limited to the following:

1. A detailed description of the proposed development and why it is of national importance,

2. Documentary evidence supporting the Petitioner's statements and establishing national significance. Such evidence must demonstrate the prospective impact of the venture, and may consist of, but is not limited to, evidence demonstrating the proposed effort:
 - i. It has national or even global implications in a given area;
 - ii. It has significant potential to employ U.S. workers or has other substantial positive economic advantages.
 - iii. It will vastly improve social well-being or cultural or artistic enrichment; and
 - iv. It impacts an issue that a government entity has described as being of national importance or is the subject of national initiatives.

What should a foreigner provide to demonstrate that he is "well positioned to advance the proposed effort" under the Matter of Dhanasar?

An EB2-NIW petition needs to establish that the alien is well-positioned to promote the proposed effort – that he has a strong position in his field and can reasonably be expected to continue his work successfully within the U.S. Examples of evidence can be detailed through expert letters demonstrating the U.S. government's interest in the petitioner's research, documentation that the alien has played a significant role in projects funded by government grants, and evidence of the educational background, skills, knowledge, experience, and other notable achievements in their field, including notable associations or media reports.

What factors does USCIS consider to assess whether "it would be beneficial for the United States to waive the job offer and labor certification requirements" for the alien under the Matter of Dhanasar?

For this requirement, USCIS may assess whether a foreign national's projected benefits for the national interest outweighs the need for a labor market test to search for U.S. workers with equivalent qualifications.

A variety of evidence must be presented to demonstrate how the alien qualifies for a national interest exemption. It is not enough, therefore, simply to list the achievements of the foreign citizen. A holistic approach should be taken to ensure that, taken together, the petition, letters of recommendation, and supporting evidence will prove that the alien qualifies for a national interest exemption.

How many publications and citations are enough to meet the EB2-NIW requirements?

There is no specific minimum requirement for publication or citation; rather, it is determined by USCIS case by case.

Can I apply for the EB2-NIW category and another visa category simultaneously?

Yes. But you must file a separate Form I-140 petition, with the required separate filing fee and supporting documentation for each visa category requested. Do not mark multiple categories on an I-140 form.

Is the priority date important in an EB-2 NIW?

The priority date is very important for any visa process for a category that is within the Visa Bulletin. The setback can be for months or even several years, and this can directly impact the strategy adopted by the candidate, including the decision between making an adjustment of status or a consular process.

Can an EB2-NIW petition be withdrawn?

Yes, the petitioner or Form G-28 representative can send a letter requesting the withdrawal/withdrawal of the I-140 petition to USCIS.

If my EB2-NIW petition is denied, how long do I have to wait to file another application under EB2-NIW or other categories again?

The law does not restrict the amount of time you can file your EB2-NIW petition after your EB2-NIW petition is denied previous filing. A previously denied petition does not prevent you from submitting another petition subsequently, regardless of the classification in question. However, unless your circumstances have been improved, it is not advisable to simply file a similar petition again. Although, in some cases, as the adjudication will most likely be done by another immigration officer and may be interpreted favorably, still, if your process is "weak", there is a risk of a new denial. The ideal is to analyze your denied process, the reasons for this denial and check if you really meet the points questioned and just need to improve your arguments.

How should I organize my petition?

Follow the tips below to learn how to organize your petition:

- 1.** Provide all necessary documentation and all evidence in the petition. A petition can be denied, immediately, without an RFE (Request For Evidence), when the initial basic requirements are not presented.
- 2.** If you provide photocopies of documents, provide clear and legible copies. Never send original documents, as they will not be returned and may be destroyed
- 3.** All documents in a foreign language must be submitted with a corresponding English translation. The English translation must be certified by a translator who has the competence to translate and must verify in writing that "the translation is truthful and in accordance with the best skills of the translator". Always send a copy of the document in the foreign language, along with the translation. Translations do not need to be sworn.
- 4.** When submitting publications or quotations, try to highlight the petitioner's name where relevant so that it can be easily identified by

the officer reviewing his or her case. It is not necessary to send the complete copy of a dissertation, thesis or research paper written by the foreign national, or one in which the foreigner's work has been cited. Include the title page and the part(s) that cite the works and the "works mentioned" or bibliography.

5. Tabulate and label the expositions and evidence at the bottom of the first page of each part of your process and provide a complete index of each part of your application, with the appropriate references. A well-organized display makes a good impression and facilitates the work of the officer who is analyzing your case and this will be a positive point for the analysis of your case.

What is a letter of recommendation?

A letter of recommendation is also called a letter of reference and is a letter written by an expert in the field of the foreign national or some individual otherwise with authority in an allied or related area. Letters of recommendation are essential in the EB2-NIW petition. Given that judging officers are rarely experts in their field, one way to determine whether a foreign national qualifies for the standard set out in the ruling on the Dhanasar issue is to

looking at the objective evidence presented. A letter of recommendation is among the most important demonstrations of your qualifications.

Who do I contact for letters of recommendation for my EB2-NIW petition?

An alien must get strong cards from both the alien's "inner circle" and the pairs' "outer circle." The foreigner's inner circle includes those he has worked directly with both the academic institution and in business. Although these cards are often the brightest, they can carry less weight as they are possibly biased. Therefore, the external curriculum can add more value, because letters issued by people who do not have a personal or direct relationship with the petitioner, but have had contact with the solutions or actions implemented/executed by the petitioner, and demonstrate the positive results of these, can add a lot of value to the arguments for the national interest of the United States.

What information should be included in letters of recommendation for an EB2-NIW?

These points should be noted in a letter of recommendation:

- 1. Recommender Qualifications:** A letter of recommendation needs to include the recommender's description. If the recommender comments on the foreigner's national or research achievements, a statement should be included in the support that establishes the qualifications of those individuals to judge the foreigner's work. It is recommended that the recommender write at least one paragraph with their professional resume to demonstrate their qualifications.
- 2. Helpful Expert Testimonials:** Expert testimonials about your accomplishments are crucial to your petition. However, keep in mind that expert testimonials should bolster the argument that you meet the standard set by law.
- 3. Substantive information:** A good letter of recommendation should point out the high level of unique expertise that the foreigner possesses. If a letter of recommendation is from an employer or teacher abroad, it should focus on the work that the foreign national is responsible for and the requirements of this job, and not on personal character assessments and the like. While a job offer is not required for EB2-NIW petitions, letters of recommendation from an employer may cite such a position to establish that very few individuals can fill the offered position (i.e., only the top individuals with exceptional ability can perform the duties required for the position) and the foreign national is one of those few individuals. In addition, letters of recommendation that briefly discuss the alien's activities and describe him only as an experienced individual but have no specific information about how the alien's efforts can contribute significantly to the interest of the United States are insufficient.

How many letters of recommendation are required for an EB2-NIW?

There is no specific number of letters established by USCIS. Generally, it is suggested to include four to six letters of recommendation in an EB2-NIW case.

What if I change jobs while my EB2-NIW petition is pending?

Because you are the petitioner yourself and are not tied to a job offer, the change of employers should not affect the status of your case and the petition will remain active. However, your new position must continue to satisfy the requirements for the EB2-NIW category and must not conflict with your area of practice, or your petition may be denied after an RFE (Request for Evidence).

Can an F-1 or J-1 student visa be visiting scholar petition for EB2-NIW? Do I have to wait to apply for a Green Card after my graduation and change the visa to H-1B?

The F-1 or J-1 visa is a nonimmigrant visa that does not allow for immigrant intent but does not mean that an F-1 or J-1 visa holder is not authorized to apply for the Green Card. Although an F-1 or J-1 visa holder cannot have immigrant intent when applying for the nonimmigrant visa, they can change their intent after receiving the nonimmigrant visa.

It is not true that someone must change the type of visa to H1B, after their graduation, before submitting an application for a Green Card. Usually student visas have a D/S (Duration of Status) validity. That is, while the foreigner is studying, he will keep his visa. It is important to maintain your status until the final judgment of your Green Card. It is completely wrong to think that just filing an application for adjustment of status characterizes the maintenance of your status. This request only guarantees you legal presence, while awaiting the final judgment.

What is the actual difference between EB2-NIW and EB1-A? Is it possible to submit both petitions at the same time?

The requirements in EB2 NIW and EB1-A are different and the application preparation is significantly different between these two classifications. Successful EB2-NIW cases are not limited to foreigners who have risen to the top in their field of expertise. Submitting materials in support of the petition that frames the case in the most favorable light will help its approval. For example, it is important for the petitioner to interpret his or her area of practice as narrowly as to maintain his or her credibility. By narrowing the frame of reference, the foreigner can be compared to a much smaller group of peers in the U.S. However, it should be noted that the AAO may be suspicious of a petition that interprets the area of practice too narrowly. The foreigner's area of specialization must be supported by abundant documentation. But once your I-140 is approved, there is no major difference between these two classifications for later I-485 application. It is possible to file two petitions, such as an EB2-NIW and an EB1-A at the same time, as long as they are not contradictory and one does not invalidate the other. There is nothing stated in the law that prohibits multiple filings and cases must be tried independently.

If I have not published articles in journals within my area, can I still apply for the EB2-NIW?

Yes, there is no specific requirement that you need to have articles published to apply or obtain approval of an EB2-NIW petition, although in many cases publications would help improve the chances of approval, because they help to establish the original contribution and of authorship. One can further support the petition by providing evidence that satisfies the listed prongs by law. For example, if an entrepreneur can establish that their proposed venture has the potential to create a significant impact on the U.S. economy, the foreign national may still qualify under EB2-NIW.

I am a holder of a J-1 subject to the two-year residency requirement in the foreign country. Can I apply for the EB2-NIW category now and have my J-1 Waiver later?

The answer is yes, you can apply for the EB2-NIW now and get the J-1 waiver later. Even with the I-140 approval, you are still subject to the two-year foreign residency requirement and must obtain the J-1 waiver before adjusting your status to permanent resident. You are not required to have a J-1 waiver before submitting an I-140 petition. The two-year alien residency requirement does not allow you to adjust J-1 status for permanent residency, but it does not preclude filing an I-140 application. In addition, you can prepare your I-140 and J-1 waiver simultaneously. If you receive I-140 approval before the J-1 waiver, you must wait for the J-1 waiver before submitting the I-485 petition for adjustment of status.

This chapter is always evolving. Forward your questions to ebook-niw@agenteusa.com so that they can be evaluated and answered. If it is a pertinent question, it may be inserted in this chapter in a future edition, revised and expanded.

Chapter 13: Final Message

The end of this guide highlights the ongoing commitment to the applicant's journey towards the EB2-NIW (National Interest Waiver) visa. This process is challenging, but with dedication, deep understanding of the requirements, and the right guidance, it becomes an achievable journey. Pursuing the EB2-NIW is not only a pathway to permanent residency in the United States, but also an opportunity to contribute significantly to the country.

As we conclude this guide, we reinforce the importance of seeking expert legal advice to ensure that each step is taken in accordance with specific regulations and requirements. Each case is unique, and the assistance of experienced professionals can be a key differential for the success of the process.

We encourage readers to explore more resources, deepen their understanding of EB2-NIW, and if questions arise, seek clarification from qualified professionals. This is a crucial chapter in their lives, and I am confident that with perseverance and knowledge, they will achieve their goals.

Do not trust "professionals" who give you guarantees of approval! This should be the first warning sign that something might be wrong. This guide was created precisely with this objective, that is, to provide you with a lot of information so that you can study about the process, analyze the requirements for approval, compare it with your reality and possibilities and make the best decision.

Being eligible, by itself, does not guarantee you anything! It takes much more than that, that is, to present a proposal that is recognized as of "National Interest" for the USA.

Remember that EB2-NIW is quite subjective and discretionary. That is, the immigration officer is free to judge your case. And although he needs to justify a denial, the fact is that he can justify himself only by claiming that he does not believe in his proposal as being of interest to the country. Because it is something very abstract, it ends up giving a very large "power" to the officer. Therefore, it is extremely important that you understand the process, its requirements, do market research and present a solid proposal rich in details.

Another important point! If you are applying from within the US, never abandon your status. As much as they tell you to do this, believe me: you may regret it bitterly if you encounter barriers in approving your petition. In very rare exceptions, a lost status is reversed. Don't be overconfident and take care of your status, always! Remember: applying an adjustment of status does NOT guarantee you a legal status, but only authorized stay, while it is pending. Thus, if you need to reapply a new process, if you previously abandoned your status, you will be ineligible for a new adjustment of status. Always seek a trusted immigration attorney for more information or questions about your immigration status.

I thank you for choosing this guide as part of your journey and wish all applicants success in their efforts to achieve the EB-2 NIW visa and, consequently, a new phase in their lives in the United States.

Good luck!

Ramon Rocha

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