

## Choosing a CEP Workshop Snapshot

During your Trainer Corps Induction Workshop, you and your training team will focus on a small section (a 'snapshot') of your CEP Workshop materials to really become familiar with, rehearse, and then deliver to fellow Trainer Corps inductees during the induction workshop. You are being provided the full Trainer Guide followed by the full Participant Workbook in this reading packet for your reference and to put the selected 'snapshots' in context. Please review this entire packet and complete the 'NAFSA CEP Workshop Snapshot Review Guide' to discuss with your team during your second virtual team meeting before coming to your induction workshop.

At the start of the induction workshop, you will be asked to choose a snapshot from your CEP Workshop materials. The purpose of choosing a snapshot is provide a smaller section of the materials to focus in on and work with during the induction workshop. As a team, be ready to choose one of the following suggested snapshots for your rehearsal and delivery during the induction workshop.

<b>CEP Workshop:</b>	Employment-Based Permanent Residence
<b>Suggested Snapshot</b>	Pathways to Permanent Residence Trainer Guide pp. 8-18 and accompanying Participant Workbook pages
<b>Suggested Snapshot</b>	Alien Labor Certification Trainer Guide pp. 57-70 and accompanying Participant Workbook pages

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Explain: We are here today to support the work around advising lawful permanent residents at the college or university level. Advising in the field of lawful permanent residence requires handling complexities of regulations and laws, balancing the long-term goals and strategies of the individual and the institution, and addressing the needs of multiple stakeholders. All of this must be woven into a successful application.



Explain: This is a tough job, but what's great about it is that you get to know your clients well. It can take several years to get a green card. And in that time, the newly hired assistant professor may move from rookie status to seasoned professional. Throughout this process, your client and your institution count on you to make sure the application is on track.

Ask:


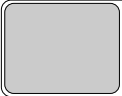


How many of you are completely new to advising in the field of lawful permanent residence?

Who has prior experience in this work?

Who is overseeing a department or position that advises lawful permanent residents?




Slide 4

Today's Trainers	
	<b>Name</b> Institution
	<b>Name</b> Institution
	<b>Name</b> Institution
	<b>Name</b> Institution

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Let me introduce today's team of trainers.



### In Practice: Who's at your table?

<p>Introduce yourselves to your tablemates.</p> <ul style="list-style-type: none"><li>• Share your name and institution</li><li>• What is your prior experience with lawful permanent residence?</li><li>• What is your primary expectation?</li></ul>	Grouping: Table
	Timing: 10 minutes
	Materials: Workbook page 4

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Now that you know who your trainers are, let's continue by meeting the people at your table. Please take 10 minutes at your tables to introduce yourselves to each other. You may use the guidelines on the slides to help you focus the conversation.

Workshop Objectives
<ul style="list-style-type: none"><li>• Describe the regulatory underpinnings of lawful permanent residence</li><li>• Follow a step-by-step process for evaluating employment-based sponsorship</li><li>• Recognize issues affecting the employment-based permanent residence process</li><li>• Initiate institutional policies for permanent residence sponsorship</li></ul>

Today we will work to provide an overview of this advanced topic. Take a look at our objectives.

**Understand that this topic:**

is vast;

is one of the most difficult immigration topics we address as advisers; and  
that there is a huge volume of materials to take into account.

**You can expect this workshop to:**

- Provide a regulatory overview or framework;
- Introduce you to processes for the evaluation of sponsorship;
- Identify common issues; and
- Explore best-practice-based institutional policies

Throughout this workshop, you will have opportunities to connect with other practitioners.

Let's take a look at the agenda.

Workshop Agenda	
1	Pathways to Permanent Residence
2	Employment-Based Permanent Residence
3	Alien Labor Certification
4	Non-Labor Certification Options
5	Filing the I-140 EB Immigrant Petition
6	Acquiring Lawful Permanent Residence

We will be working through six sections, each building on the content of the preceding one. We will take one break each in the morning and the afternoon and have scheduled an hour for lunch. There is a lot to cover in a short period of time.

**During the Workshop:**

- Remove distractions by turning off your phones.
- Ask for clarification on slides/talk
- Engage in the activities, this is your time to practice and make mistakes
- Meet new people; we'll switch seats periodically to help you meet others in the room
- Raise questions/issues at your table
- Ask questions during wrap-up

**After the Workshop**

- Review/refer to the workbook
- Continue learning about the PR process
- Reach out to your new contacts for advice

1 Pathways to Permanent Residence

- Identify different pathways to acquiring PR
- Search statutes and regulations pertaining to Permanent Residence (PR)
- Discuss institutional policy implications for sponsorship

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Let's get started!

First, we'll take a look at the different pathways to acquire permanent residency.

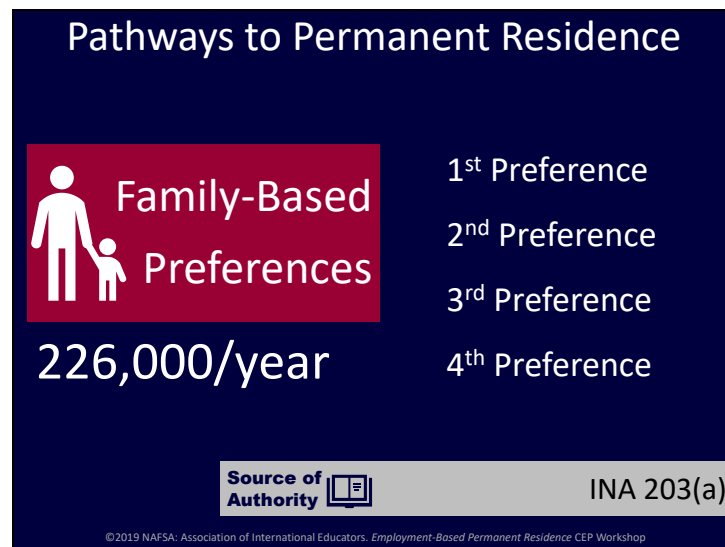
We'll walk you through available options, take a look at how best to search pertinent statutes and regulations, and explore the impacts your own institution's policies may have on sponsorships.



A person can become a permanent resident of the U.S. in a variety of ways. We can group the different pathways to acquiring permanent residence into three categories:

Family-based preferences;  
Employment-based preferences; and  
Public policy and humanitarian reasons


We will provide a brief overview of each of these pathways so that, as advisers, you can alert scholars to their options. Regardless of the way the individual obtained the green card, the rights of the individual will remain the same.



**Pathways to Permanent Residence**

**Family-Based Preferences**  
226,000/year

- 1<sup>st</sup> Preference
- 2<sup>nd</sup> Preference
- 3<sup>rd</sup> Preference
- 4<sup>th</sup> Preference

Source of Authority  INA 203(a)

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The U.S. government provides for immigration based on family relationships.

There are 4 preference categories under this pathway:

#### FAMILY-SPONSORED PREFERENCES

First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children of Permanent Residents, with 'children' defined as unmarried sons and daughters under the age of 21: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

Pathways to Permanent Residence

**Employment – Based Preferences**  
140,000/year

1<sup>st</sup> Preference  
2<sup>nd</sup> Preference  
3<sup>rd</sup> Preference  
4<sup>th</sup> Preference  
5<sup>th</sup> Preference

Source of Authority INA 203(b)

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## EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "\*Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level. EXAMPLES: Afghan, Iraqi translators

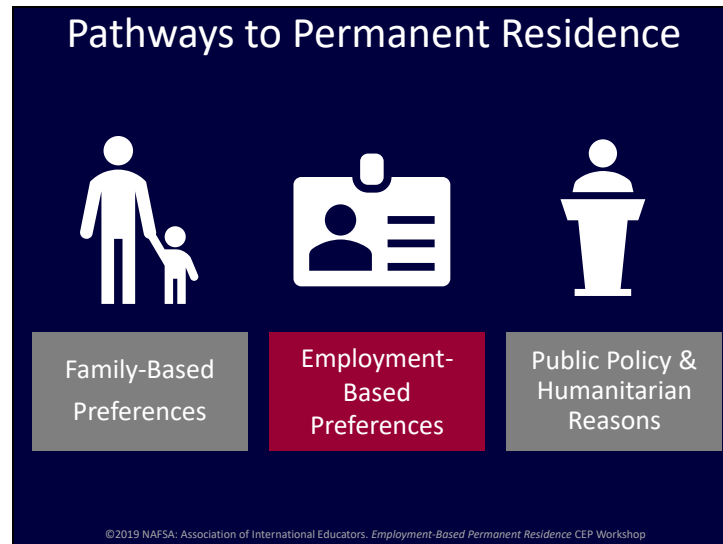
Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of Pub. L. 102-395.






The U.S. makes a provision for a variety of other types of immigration. The Diversity Lottery was established in the 1990s to respond to a call to increase immigration from countries that were under-represented in the immigrant pool.

Refugees and asylum procedures account for situations where an individual must flee general or individual conditions of their home country.



We do not advocate advising in the realm of either family-based immigration or public policy/humanitarian immigration, since the institution does not play an official role in those processes. It is important to remember that the international adviser represents the interests of the institution. In cases where the institution is not represented, it is better for the individual to have an attorney represent the individual's case.

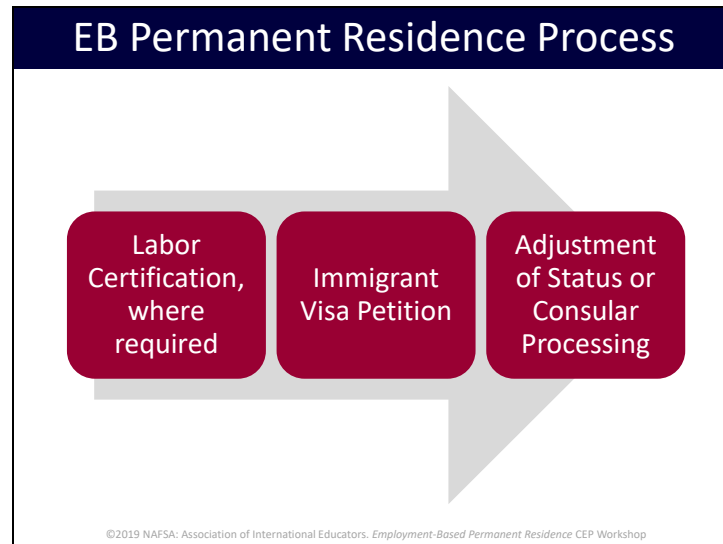


### In Practice: Advising the Right Pathways

<p>Refer to the Workbook and read your assigned scenario.</p> <ul style="list-style-type: none"><li>• Consider which path to permanent residence would be the best option in this case.</li><li>• Be prepared to share and explain your findings at the end of 5 minutes.</li></ul>	Grouping: Pairs
	Timing: 5 minutes
	Materials: Workbook pages 7-8

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Note to trainer: Assign one of four scenarios to pairs



There are several stages within the EBPR application, adjudication and issuance process.

**Labor Certification, where required**

Employer files ETA-9089 with DOL

**Immigrant Visa Petition**

EB I-140 filed by employer/self with USCIS

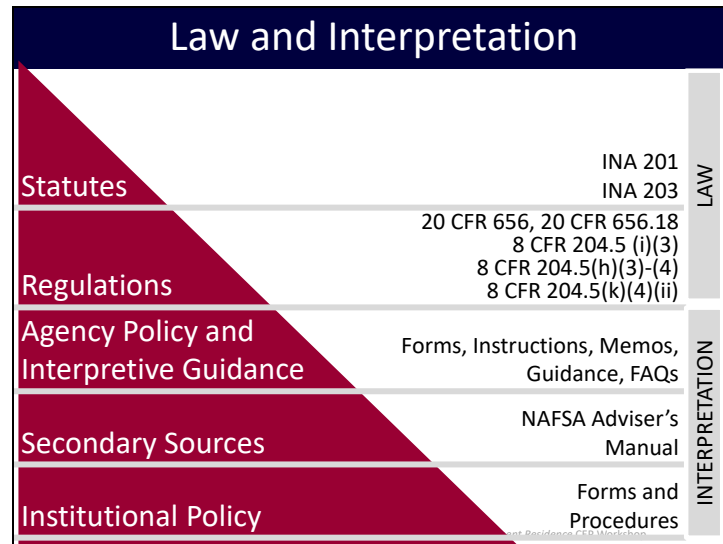
**Adjustment of Status or Consular Processing**

AOS for immigrant visa by applicant filing I-485 application with USCIS In the U.S. **or**  
Consular Process Immigrant Visa through the National Visa Center (NVC); immigrant visa  
issued at U.S. Consulate/Embassy abroad



The specific laws concerning lawful permanent residence reflect how the United States makes choices about who can live and work permanently in this country.

Working with this particular set of regulations can be frustrating. This is especially true when a law or regulation can sway with the politics of the moment.



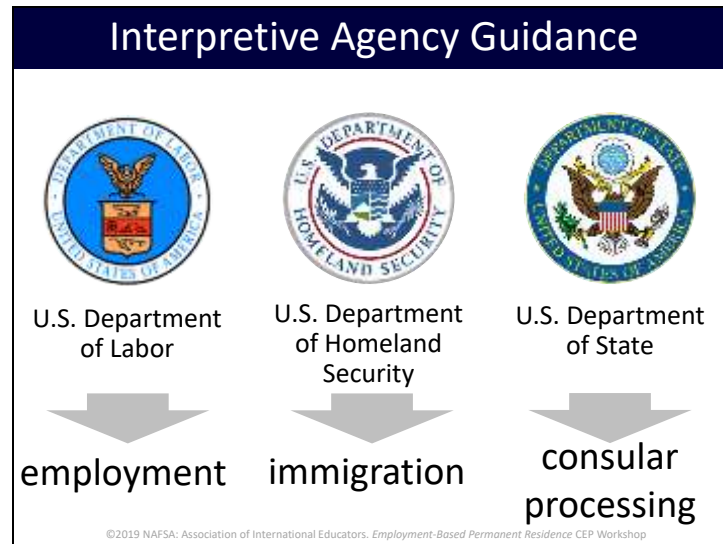
### Interpretation and law are linked, but do not have equal weight: law weighs more!

Law and interpretation do not have equal weight. That is to say, law has more authority than interpretation, and interpretation is always bound by the confines of the language of the law. The two are, however, inexorably linked.

Interpretation of the law is also different than application of the law. Basically, laws are interpreted and then applied to a unique, specific set of facts. Adjudication occurs when the government applies the law and interpretation to make a decision about a request for a benefit provided for in the law.

### Authority Hierarchy

There is a hierarchy in the relative authority that laws and interpretation have. The Constitution is the supreme law of the land, and is at the top of the hierarchy. No law or interpretation of law can contravene the Constitution. Statutes passed by Congress, presidential executive orders, and precedent decisions of the U.S. Supreme Court have the next most important place in the hierarchy of authority. Laws passed by federal agencies, commonly known as regulations, are the next most important kind of law. Precedent decisions made by administrative appellate bodies have an equal place with regulations, since the administrative agencies are bound to follow the precedent decisions of the appellate bodies above them.

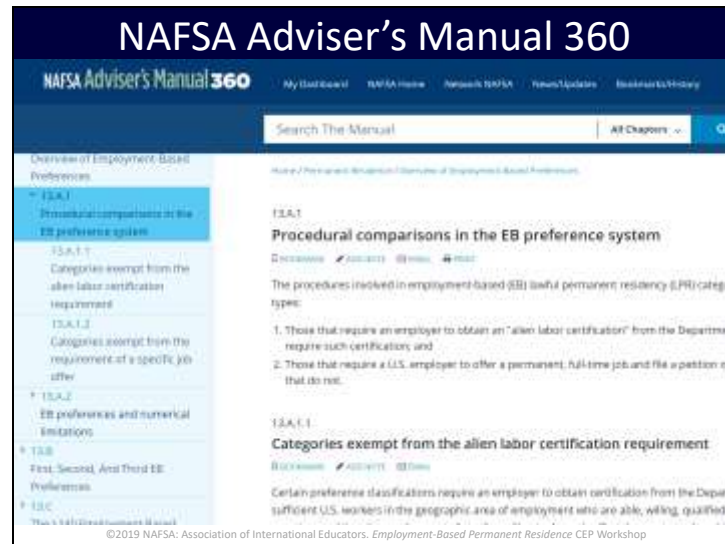


DOL, DHS, and DOS officers adjudicate matters before them by interpreting laws and then applying the interpreted law to a specific set of facts. Because the wording of both statutes and regulations is often ambiguous, the agencies have instituted standardized mechanisms for guiding officers in the field on how the law should be interpreted. Because procedures are often not discussed in great detail in the law, internal guidance is also provided on proper procedures.

There are two levels of standardized written guidance:


- Cables, memos, and other rapid-delivery communication vehicles; and
- Codified internal interpretations that preserve internal guidance of standing value in “manual-like” form.

Despite the fact that the intention of internal agency guidance is not to make what should be regulatory changes, agency guidance often does have a powerful effect on the outcome of particular cases, especially in cases where regulations have not yet been written to implement a statute and the only guidance available is written internal agency interpretation.



There are many, many sources of authority that will shape how you address permanent resident petitions along the way. One useful source of interpretive guidance is the NAFSA Adviser's Manual 360. This resource cross-references the variety of sources of authority and links you to those primary sources. It also provides practice insights relevant to campus settings. This is an online tool, but for the purposes of this workshop we have printed pertinent sections to reference as we go along. Let's take a look.





### In Practice: Search the Sources

<p>Review the table reference. to respond to each questions.</p> <ul style="list-style-type: none"><li>• Where can the answer be found?</li><li>• Who is the regulating agency?</li></ul>	Grouping: Groups of 2-3
	Timing: 5 minutes
	Materials: Table References, Workbook page 11

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Note to trainer: This exercise requires participants to work within the table references.

- A department sponsor believes their candidate qualifies for the Outstanding Professor category, where can you look to learn more about the qualifications?

**INA 203(b)(1)(B)**

**USCIS website**

**NAFSA AM360 13.B.3**

2. Your Human Resources Director has shared the job description for a computer science faculty position. What resource should you check next to see if it meets standard expectations.

**onetonline.org**

3. You would like to explain to a coworker the criteria by which USCIS weighs an I-140 application. What resource can you reference to share that criteria?

**uscis.gov**

**Adjudicator's Field Manual**

4. There is some discrepancy about who should sign the form ETA 9089, where can you find that information?

**NAFSA AM360 12.F**

**ETA 9089**

5. You have been tasked with getting the prevailing wage determination, which you have never done before. Where do you go for help?

**NAFSA AM360 8**

**ETA Form 9141 Instructions**

**[www.doleta.gov](http://www.doleta.gov)**

6. An applicant asks whether you advise them to pursue consular processing or adjustment of status. Where can you find advising language to help frame the decision for the applicant?

**NAFSA AM360 13.D**

7. You are ready to file the petition!! Where can you find out whether there are still spaces in this year for the preference level and category?


**[www.uscis.gov/visabulletininfo](http://www.uscis.gov/visabulletininfo)**

**[travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html](http://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html)**



There are many factors that influence the formation of a coherent policy for processing employment-based petitions. The formation of a written policy can serve to prevent some problems and mitigate others. We are going to discuss some of these factors now, but for each segment, we will highlight areas where we would advise you to discuss policy for your specific institution.

The decisions that go into the formation of good institutional policy should be taken in a systematic and rational way, with attention paid to all the stakeholders. We include extensive materials in this workbook on formation of institutional policy in a general sense.



What is the demand for services?

Who is the client?

Who is the sponsor?

Who is the service provider?

What are the fees? Who pays?

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Note to trainers: Describe your own institutional positions to these questions. Highlight how capacity considerations impact an institution's ability to sponsor Permanent Resident applicants.

Adviser's Role in PR Process	
To what extent does the adviser participate in the permanent residence application process?	<ul style="list-style-type: none"><li>• Informing without advising</li><li>• Duties to employer; duties to employee</li><li>• Unauthorized practice of law (UPL)</li><li>• Be aware of the risks</li><li>• Where to draw the line?</li></ul>
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The extent to which you as an adviser get directly involved in the PR application process largely depends on how your organization has structured the process.

However, there are several ground rules that apply to all advisers:

- It is important to stay neutral; you should *inform*, not advise in the sense of making recommendations for actions.
- Keep in mind that you have duties to both the employer and the employee; this may make it necessary for you to seek further guidance at times.
- Beware of unauthorized practice of law, or even the appearance thereof.
- Keep the inherent risks in mind; and
- Make sure you know where to draw the line.

### LPR Service Provider

LPR services-provider (international office) staffing

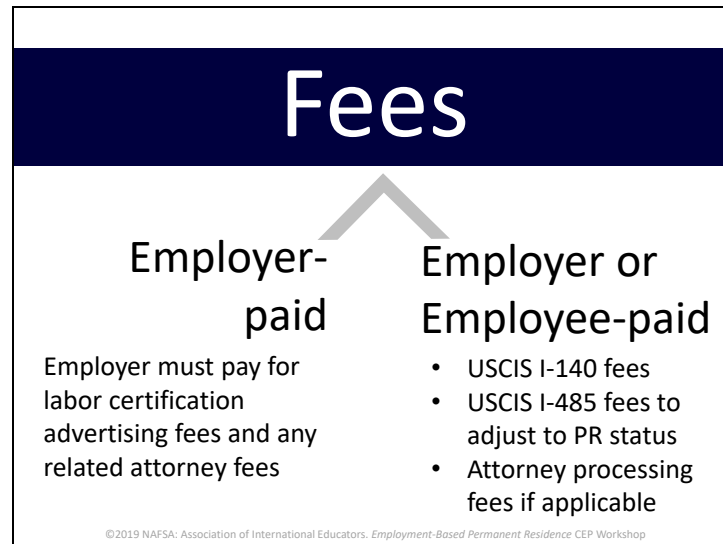
- Size of staff, learning curve and turnover, volume of applications/petitions?
- Are they trained to do PR?
- Do you want to/can you farm out the work to outside attorneys?

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Who acts as the “Provider” varies from institution to institution. Typically, the provider is the International Office, but in some cases, HR, legal counsel, the office of VP for academic affairs, etc. may take on those roles.



Staffing considerations are largely informed by the demand for services. Based on that, the client-to-staff ratio is determined, as is the level of required staff training. And ultimately, those considerations will include whether access to outside counsel is needed.



Fee information includes the following:

From the NAFSA AM and resources pages:

A rule effective July 16, 2007 [72 Fed. Reg. 27904 (May 17, 2007)] made significant changes, including imposing a 180-day validity period on approved labor certifications, and prohibiting aliens paying any employer costs associated with the labor certification process, including aliens paying what DOL considers employers' attorney fees.

[http://www.nafsa.org/findresources/Default.aspx?id=35270&\\_ga=2.127258509.1280427089.1538413836-899856200.1505323947](http://www.nafsa.org/findresources/Default.aspx?id=35270&_ga=2.127258509.1280427089.1538413836-899856200.1505323947)

Employer must pay for labor certification advertising fees and any related attorney fees (if applicable, fee amounts for each will vary)

USCIS I-140 fees can be paid by the employee or the employer and can include

- USCIS I-140 petition fee \$700

- USCIS I-907 expedited processing fee if needed \$1410

- Attorney processing fees if applicable

USCIS I-485 fees to adjust to PR status can be paid by the employee or the employer and can include


- USCIS I-485 petition fee \$1225

- USCIS I-485 petition fee for dependents \$1225 or \$750 if under 14 years of age

- Attorney processing fees if applicable



Slide 27

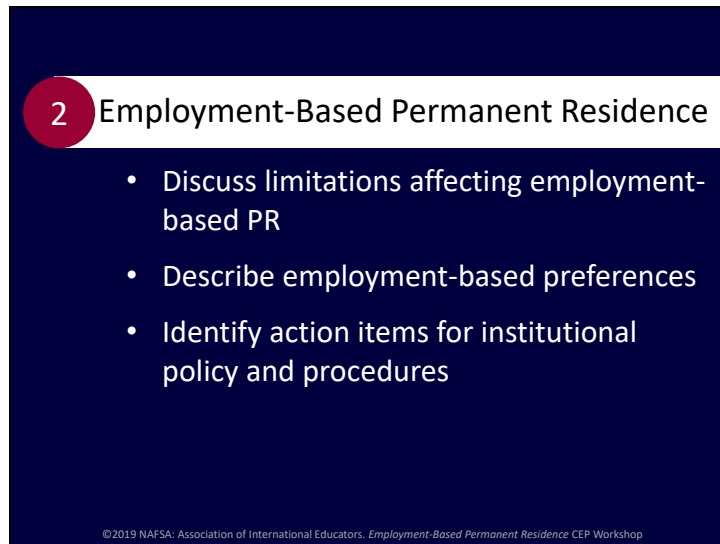


### In Practice: Institutional Structure and Policy

Review the policy document. Consider whether you have a standard response and policy for each category.	Grouping: Small groups
	Timing: 10 minutes
	Materials: Workbook pages 17-18

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Note to trainer: Refer to Workbook

A presentation slide with a dark blue background. At the top, a white horizontal bar contains a red circle with the number '2' and the text 'Employment-Based Permanent Residence'. Below this, a bulleted list is centered on the slide. At the bottom, a small line of text provides copyright information.

## 2 Employment-Based Permanent Residence

- Discuss limitations affecting employment-based PR
- Describe employment-based preferences
- Identify action items for institutional policy and procedures

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Let's take a closer look at EBPR.



U.S. Department  
of Homeland  
Security



immigration

### Department of Homeland Security Resources

- Regulations
- Policy Memoranda
- Immigration Manuals
- Policy & Procedural Guidance/Interpretations
- Administrative Decisions
- Application/Petition Forms
- Current Mailing Addresses/Fees

[www.uscis.gov](http://www.uscis.gov)

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As we discussed in the first section, regulations are one of the basic resources we need to refer to during our work with ISS advising. While there are a number of resources available, let me point out two that play a significant role for our daily work.

Please refer to your table reference for further resources, including the following examples:

### Field Memoranda

The USCIS "rapid-delivery" vehicle for getting interpretive guidance to its field offices is the Memorandum. USCIS memoranda are prepared by USCIS headquarters staff, after the content of the policy guidance had been approved at the necessary levels within DHS. You can find some USCIS memoranda on the USCIS website: <https://www.uscis.gov/laws/policy-memoranda>.

### Field Manuals

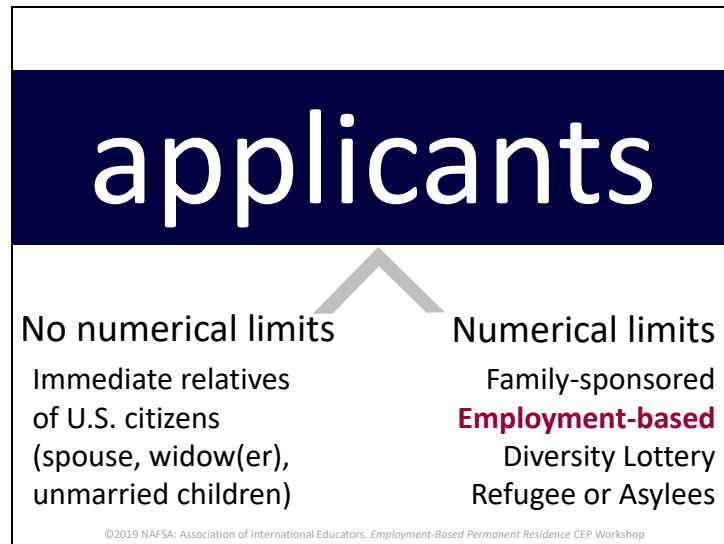
The most frequently used USCIS Field Manuals are:

The USCIS Adjudicator's Field Manual (AFM)

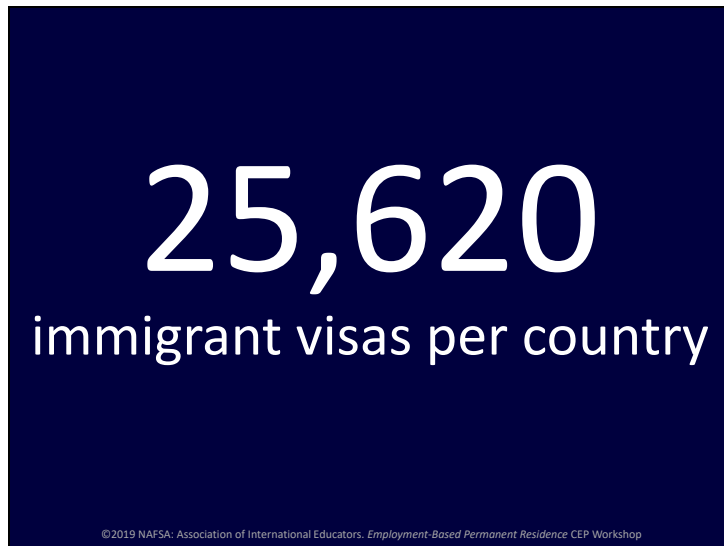
The USCIS Policy Manual. "The USCIS Policy Manual is the agency's centralized online repository for USCIS's immigration policies. The USCIS Policy Manual will ultimately replace the Adjudicator's Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other policy repositories."



Adding the USCIS website to your favorites will give you quick access to valuable information.




You may remember that some immigrant categories are not subject to numerical limitations. It is noteworthy, however, that **all** employment-based immigration is subject to such numerical limits.




Numerical limitations that apply to individual countries, with immigrants from each country aligned with its 'chargeability' within this limitation.

## Per-Country Numerical Limitations

A person's chargeability area is determined by his or her country of birth, not citizenship



**Source of Authority**  22 CFR 42.12 and 9 FAM 503.2

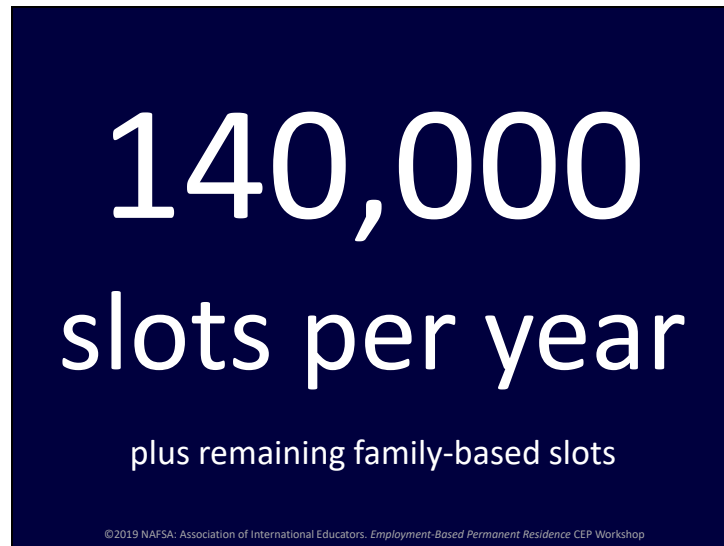
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In other words:

The country to which an immigrant entering under the preference system is accredited is known as the country of "chargeability." Chargeability is usually determined by country of birth. There are some exceptions to this general rule. For example, the "derivative chargeability" exception is designed to prevent the separation of family members, and allows a spouse or child to be charged to the chargeability area of the principal alien provided a visa would not be immediately available if the spouse or child were charged to his or her own country of birth, and the spouse or child is accompanying or following-to-join the principal alien.

22 CFR 42.12 - Rules of chargeability

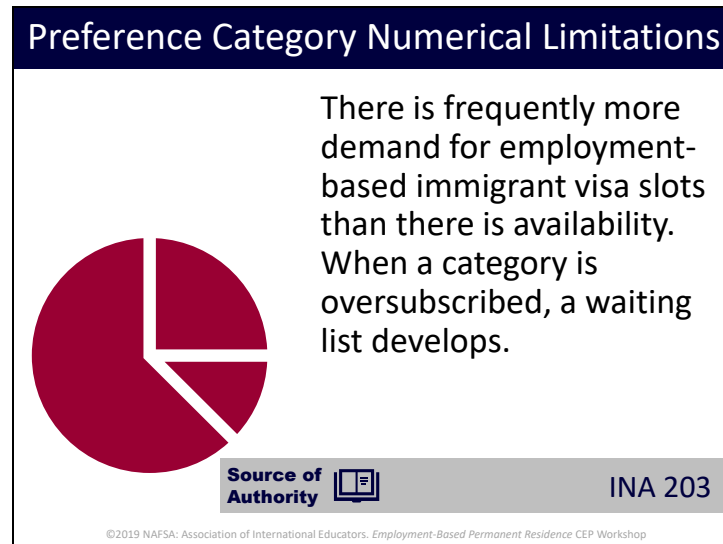
9 FAM 503.2 - Chargeability



In addition to the numerical limitation based on country, there is a further limitation to bear in mind:

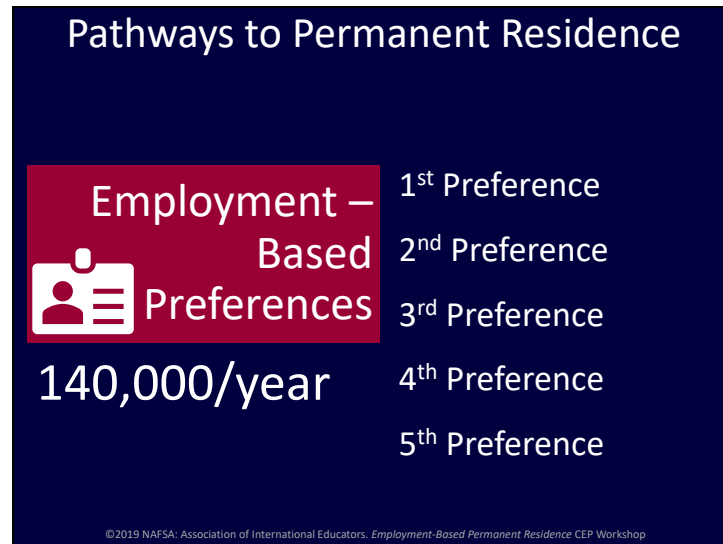
The INA currently limits the total number of employment-based (EB) immigrants to 140,000 plus the number of family-based immigrant slots not used (normally they are all used, though), per fiscal year. These 140,000 slots are divided between five employment-based "preference" categories, as follows:





There is frequently more demand for employment-based immigrant visa slots than there is availability. A preference category can become *oversubscribed* in two ways: either the total category availability has been reached, or the per-country limit for that category has been reached.

When a category becomes oversubscribed either in its entirety or for a particular country, a waiting list develops. A person's place on the waiting list is determined by his or her "priority date," which is the date that a labor certification application was first filed on his or her behalf with the Department of Labor, or, for those categories exempt from the labor certification requirement, the date on which a preference petition was filed on his or her behalf with USCIS.



## EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "\*Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of Pub. L. 102-395.

# EB-1

Employment –  
Based  
Preferences

Numerical limitation  
**28.6%**

## 1st Preference

- Aliens with extraordinary ability
- Outstanding professors and researchers
- Certain multinational executives and managers

Source of Authority

INA 201(d) and 203(b)

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Let's take them one at a time.

### EB-1

**Aliens with extraordinary abilities:** This category allows aliens with extraordinary ability in the sciences, arts, education, business, or athletics to immigrate permanently to the U.S. Remember that the extraordinary ability must be demonstrated by sustained national or international acclaim and the intending immigrant's achievements have been recognized in the field through extensive documentation.

Possible examples: **Please note** that we do not know in which status those individuals actually entered the U.S., but they certainly would have qualified for those categories - Arnold Schwarzenegger (Austria), Yao Ming (China), Wayne Gretzky (Canada)

**Outstanding professors and researchers:** The purpose of this classification is to allow aliens who are outstanding professors and researchers with at least three years experience in teaching or research, and recognized internationally for their outstanding academic achievements in a particular academic field, to immigrate permanently to the U.S. To be considered to be 'outstanding', a professor or researcher must be internationally recognized in his academic area and meet certain other requirements.

Possible example: Albert Einstein (Germany)

**Certain multinational executives and managers:** The purpose of this classification is to allow aliens who are executives and managers of U.S. companies or foreign companies with branches,

affiliates, or subsidiaries in the U.S. and who are seeking to enter the U.S. to continue service to that company, to immigrate permanently to the U.S. To qualify for admission as an immigrant, a multinational executive or manager must have been employed in a managerial or executive capacity for at least one out of the past three years. The past employment must be with the same employer, an affiliate, parent company, or subsidiary.

Possible example: Liz Claiborne (Belgium)

# EB-2




Employment –  
Based  
Preferences

Numerical limitation  
**28.6%**

2<sup>nd</sup> Preference

- Members of professions holding advanced degrees
- Aliens of exceptional ability in the sciences, arts, or business

Source of  
Authority 

INA 201(d) and 203(b)

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## EB-2

Members of professions holding advanced degrees

Aliens of exceptional ability in the sciences, arts, or business

Ask: What positions on campus might fall into this category?

# EB-3

Employment –  
Based  
Preferences

Numerical limitation  
**28.6%**  
<10,000 other

3<sup>rd</sup> Preference

- Professionals and skilled workers (requiring 2 or more years of specific education, training, or experience)
- Other (unskilled) workers

Source of  
Authority

INA 201(d) and 203(b)

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## EB-3

Professionals and skilled workers (requiring 2 or more years of specific education, training, or experience)

Other (unskilled) workers

Ask: What positions on campus might fall into this category?

# EB-4

Employment –  
Based  
Preferences

Numerical limitation  
**7.1%**

4<sup>th</sup> Preference

- Certain special immigrants

Source of  
Authority

INA 201(d) and 203(b)

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EB-4 is a category that we won't be working with, but is important to note that it exists.

This category includes certain religious workers and special immigrants, such as Afghan and Iraqi translators who supported U.S. government activities in those countries.

# EB-5



Employment –  
Based  
Preferences

Numerical limitation  
**7.1%**

5<sup>th</sup> Preference

- Immigrant Investors  
Employment creation, for immigrants who invest in new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time jobs for U.S. workers

Source of  
Authority 

INA 201(d) and 203(b)

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EB-5 is a category we won't be working with, but important to note that it exists.






Your institution may sponsor a variety of employment-based beneficiaries. From faculty positions to non-faculty positions, your institution must determine which roles benefit the institutional mission and what capacity you have to provide them support services. The sample positions listed in your workbook provide insights that may impact whether you choose to sponsor that position.

Throughout this workshop, we will examine several of these positions more closely.

## College and Universities

*How are...* colleges and universities treated differently than typical employers?




Campus Caveat

How does that distinction impact procedures throughout the permanent resident process?

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Group Discussion



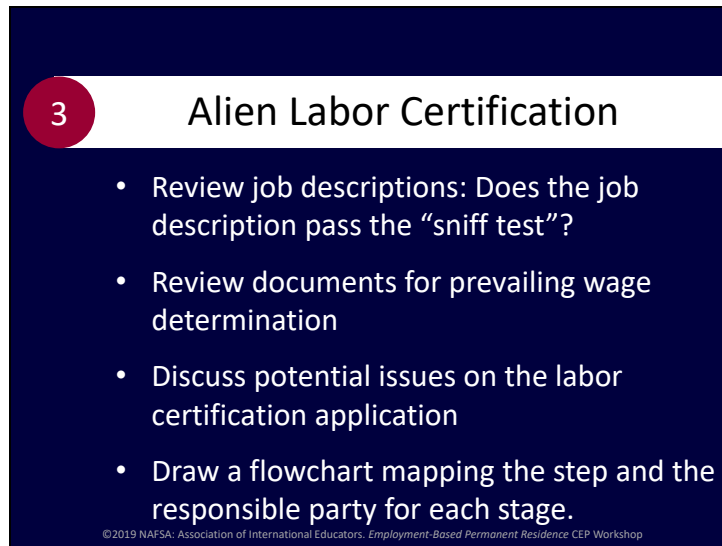
### In Practice: EB Positions at Your Institution

<p>Review the sample employment-based institutional positions.</p> <ul style="list-style-type: none"><li>• Which positions are likely to be offered LPR services?</li></ul>	Grouping: Individual
	Timing: 5 minutes
	Materials: Workbook pages 23-24

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Encourage participants to examine the EB positions that are typical on a campus. Are there limits on what positions they choose to sponsor?

Following the exercise, ask for a couple of participants to share which positions they sponsor.

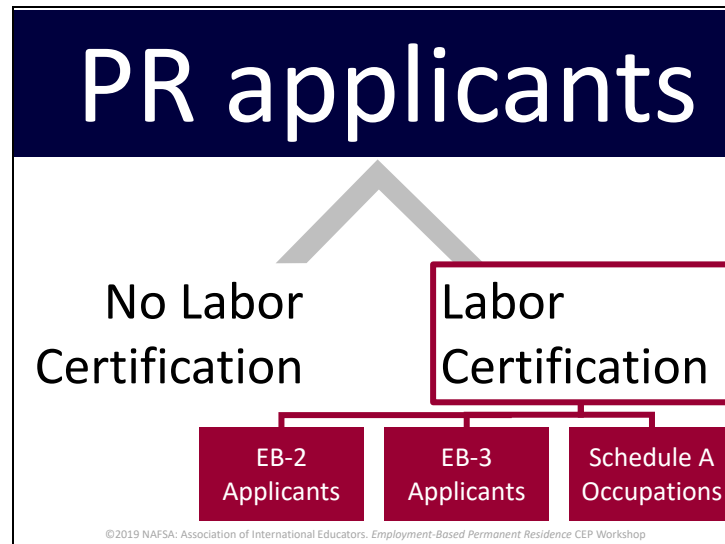
A presentation slide with a dark blue background. At the top, there is a white horizontal bar. On the left side of this bar is a red circle containing the number '3'. To the right of the circle, the text 'Alien Labor Certification' is written in a white sans-serif font. Below the white bar, there is a bulleted list of four items in white text. At the bottom of the slide, there is a small line of white text.

### 3 Alien Labor Certification

- Review job descriptions: Does the job description pass the “sniff test”?
- Review documents for prevailing wage determination
- Discuss potential issues on the labor certification application
- Draw a flowchart mapping the step and the responsible party for each stage.

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Let’s move on to Alien Labor Certification.




Labor Certification is required for these EB-2 and EB-3 categories




Discuss which of these categories are sponsored. What policies need to be in place for these petitions? Who is charged to assemble the preponderance of evidence?

## Department of Labor



U.S. Department  
of Labor

for:



employment

- Regulations (20 CFR)
- Technical Assistance Guide (TAG)
- Frequently Asked Questions (FAQs)
- General Administration Letters (GAL)
- Training and Employment Guidance Letters (TEGL)
- Forms
- Processing Times

[www.foreignlaborcert.doleta.gov](http://www.foreignlaborcert.doleta.gov)

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This part of the process is primarily overseen by the Department of Labor. When you are working through the Form ETA 9089, you will want to tap all of the variety of resources to ensure you have the latest guidance. But let's take a closer look at some guidance that may not be as familiar to you. There is a description in your workbook.

### **Department of Labor field guidance**

#### **GALs, TEGLs, and FAQs**

Training and Employment Guidance Letters (TEGLs) (and the General Administration Letters (GALs) that preceded them) are the equivalent of DHS memoranda and DOS cables. Advisers who work with the H-1B category and with the Labor Certification process must be aware of the content of GALs and TEGLs affecting those areas [[Access GALs and TEGLs on the DOL Web site](#)]. DOL used the GAL format until November, 2001, after which it began disseminating field guidance in the form of TEGLs [see TEGL No. 06-01 (November 16, 2001)]. However, it has been years since DOL has disseminated Office of Foreign Labor Certification Guidance through TEGLs. Currently, most OFLC guidance comes in the form of Frequently Asked Questions (FAQs), posted on the OFLC Web site: [www.foreignlaborcert.doleta.gov/faqsanswers.cfm](http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm).

#### **Technical Assistance Guide (TAG)**

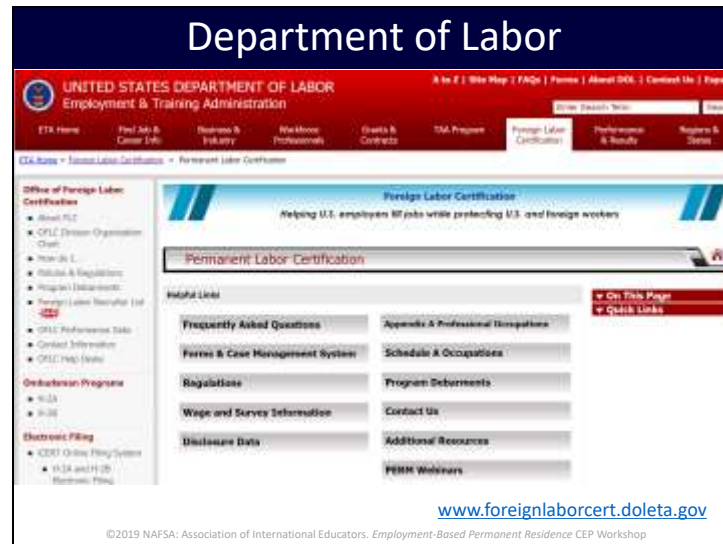
The TAG was a DOL collection of field guidance on permanent labor certifications. The TAG is no longer updated, but is still a fruitful source of information for advisers.

#### **BALCA Judge's Benchbook**

The Board of Alien Labor Certification Appeals (BALCA) "Judge's Benchbook" is a source of guidance published by the Department of Labor's Office of Administrative Law Judges, to be

used as a reference for BALCA's administrative law judges. It covers the permanent alien labor certification process, and provides citations to BALCA precedent decisions.





Ask: How many of you have visited the Department of Labor's website? This is the central space to find guidance about Permanent Labor Certification.



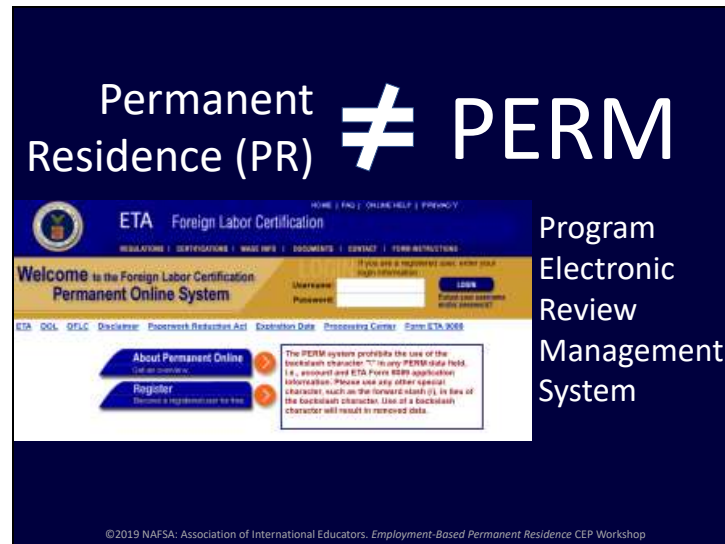
Finally, a key resource to help with job descriptions and wage determinations, is O\*Net online. In your workbook, we have a sample job description for a post-secondary, physics teacher. We'll be using this resource today as we discuss wages.

### Use of O\*NET

In its consideration of whether the employer's requirements are normal for the occupation, among other considerations, DOL will compare the employer's job description (duties and minimum requirements) to an occupational classification presented in O\*NET (the Occupational Information Network). O\*NET is a comprehensive DOL database of worker attributes and job characteristics, that is also used for many purposes other than labor certification. O\*NET replaces the Dictionary of Occupational Titles (DOT) as the primary source of occupational information in the labor certification process.



Another resource we would like to point out is the NAFSA adviser's manual. Section 12 is dedicated to PERM labor certification. Section 8, provides information about prevailing wage determinations. You'll see that we have organized this section similarly to how the Adviser's Manual is organized.



Program  
Electronic  
Review  
Management  
System

It is important to pause and make clear that PERM is not an abbreviation of Permanent Residence. PERM is an acronym for the system used to acquire foreign labor certification.

Ask does anyone know what PERM stands for? [Click to reveal.]

An employer must obtain an individual labor certification on behalf of an alien applying for lawful permanent residence under several employment-based preference classifications. PERM (the Program Electronic Review Management system) is an attestation-based system for the filing and processing of labor certification applications filed by U.S. employers.

DOL Standards for Granting Labor Cert	
<p>The underlying goal of the Department of Labor (DOL) is to protect jobs for U.S. workers.</p>	<ul style="list-style-type: none"><li>• The prevailing wage is met or exceeded</li><li>• The job was made available to U.S. Workers through an industry-appropriate recruitment effort that conforms to DOL regulations</li><li>• No able and available U.S. Worker had the minimum qualifications needed to do the job, even if the skills of the alien exceeded those of the U.S. Worker</li></ul>
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The underlying goal of the Department of Labor (DOL) is to protect jobs for U.S. workers. There are 2 ingredients for DOL to grant a labor certification

There are not sufficient U.S. workers who are able, willing, qualified, and available to accept a particular position; and

Employing a foreign worker in the given occupation will not adversely affect the wages and working conditions of U.S. workers employed in that occupation.

DOL has the following standards:

- DOL will issue a labor certification only if:
  - the prevailing wage is met or exceeded
  - the job was made available to U.S. workers through an industry-appropriate recruitment effort that conforms to DOL regulations
  - no able and available U.S. worker had the minimum qualifications needed to do the job, even if the skills of the alien exceeded those of the U.S. worker (note the important exception labor certifications for college and university teachers.)
- The standards for labor certification recruiting differ substantially from “real-world” recruiting practices and standards.

**Form ETA 9089**  
Application for Permanent Employment Certification

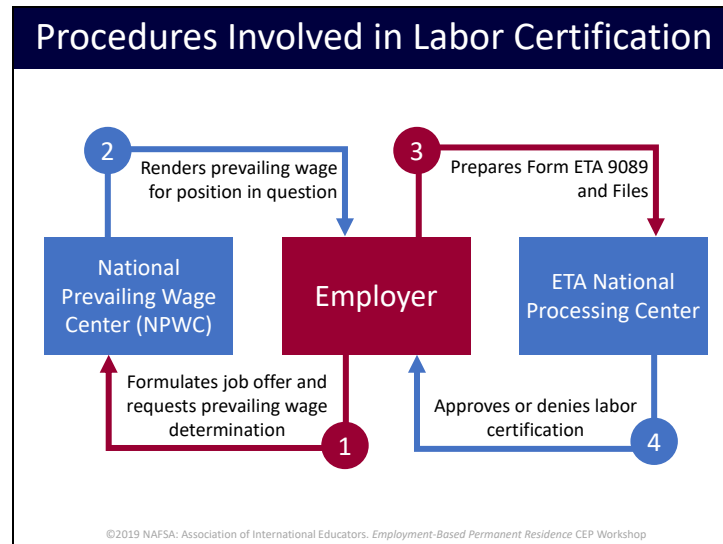
- + Job Opportunity
- + Alien's Qualifications
- + PERM Wage Requirements
- + Notice and Recruitment Requirements
- + Labor Cert Procedures and Determination

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The completion of the Form ETA 9089, had several in depth phases. Throughout this section, we will address each of these in turn. The burden of proof for obtaining labor certification is on the employer who seeks an alien's entry for permanent employment.

There are several labor certification issues that need to be addressed in this process.

- How a “prevailing wage” is determined and applied to your particular case by the NPWC
- Whether the job’s duties or minimum requirements are set in an “overly restrictive” way
- How the alien’s qualifications interface with the job’s stated minimum requirements
- What constitutes adequate recruitment for the job in question
- The standards for rejecting a U.S. worker during recruitment and how to document a recruitment effort
- The importance of filing deadlines and timely action



Let's take a closer look at the key parties involved in the process as well as the process steps. As you can see it's a 4-step process where the employer (or employee if they are self-petitioning) works with external agencies to seek approval.

Parties Involved		
Employer	NPWC	Atlanta National Processing Center
<ul style="list-style-type: none"> <li>• Formulates job offer, duties, minimum requirements, and wage</li> <li>• Obtains prevailing wage determination</li> <li>• Conducts recruitment campaign</li> <li>• Develops and maintains documentation</li> <li>• Prepares and files form ETA 9089</li> </ul>	<ul style="list-style-type: none"> <li>• Upon request of employer, renders a prevailing wage determination (PWD) for the position in question</li> <li>• Reviews employer-provided wage survey data, if any</li> </ul>	<ul style="list-style-type: none"> <li>• Approves or denies labor certification</li> <li>• Conducts audits</li> <li>• Manages supervised recruitment and follow up</li> <li>• Responds to employer challenges to labor cert determinations</li> </ul>

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The exchange of materials and documents ultimately renders the Labor Certification. You can see the specific roles, in your workbook. Looks specifically at the Employer task list. In order to do this step in the process, it is critical that you know WHO at your organization is doing this work and HOW it will be done.

[Do not read the screen.]

#### Employer

- Formulates job offer, duties, minimum requirements, and wage
- Obtains prevailing wage determination
- Conducts recruitment campaign
- Develops and maintains documentation
- Prepares and files form ETA 9089

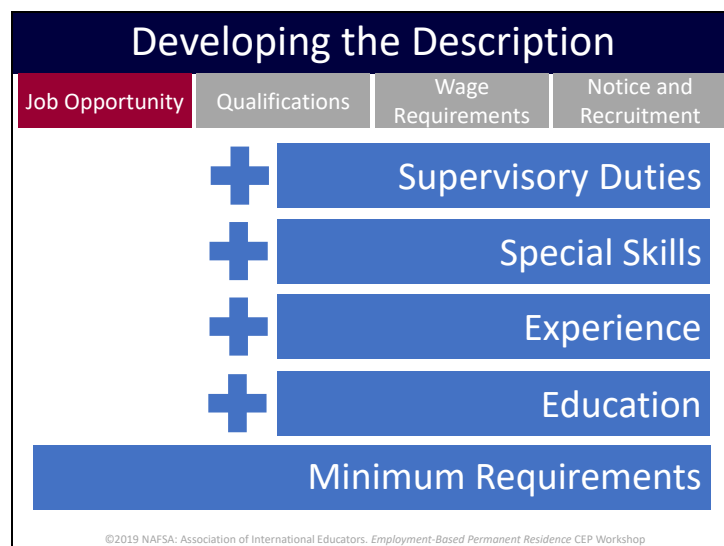
#### NPWC

- Upon request of employer, renders a prevailing wage determination (PWD) for the position in question
- Reviews employer-provided wage survey data, if any

#### Atlanta National Processing Center

- Approves or denies labor certification
- Conducts audits
- Manages supervised recruitment and follow up
- Responds to employer challenges to labor cert determinations





When developing the description, it is important to differentiate between what is preferred and what is required. It breaks down into different levels, from the bottom we want to establish minimum requirements—with each factor above impacting who you can hire and what you will have to pay them.

For example, if the position has additional skills, it will likely require a higher wage.

In addition, the job opportunity must be:


- Located in the United States
- Permanent - the employer must intend to employ the alien for the foreseeable future. The position cannot have a specified end date and cannot be seasonal or intermittent
- Full-time
- A bona fide job opportunity
- In compliance with prevailing wage requirements

ETA 9089 Part H

Education and Training

Job Opportunity
Qualifications
Wage Requirements
Notice and Recruitment

**Where do you see alignment with the job description categories?**



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Take a look at the Part H. Where do you see alignment with the job description categories? Which categories align with experience? What about education?

The point here, is that if you develop your description at the outset with these clearly defined, you will have an easier time with aspect of gaining labor certification.

Now let's look at the next section.

ETA 9089 Part H

Job Duties and Requirements

Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
-----------------	----------------	-------------------	------------------------

What are some of the risks that can occur when shaping the job duties and requirements?

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On Form ETA 9089 at item H, the employer must describe the job opportunity, including the duties of the job and the minimum requirements needed to adequately perform the job.

The tasks description in the job's O\*NET entry

- Make sure job requirements are “normal” (per DOL) or justifiable DOL’s O-Net Online provides DOL’s explanation of normal (SVP) Employer must document business necessity for others

Minimum Requirements			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<p>Employer needs to do a two-step evaluation to determine if the requirements for the job truly are the minimum requirements:</p> <ol style="list-style-type: none"> <li>1 Did the alien fulfill the minimum requirements at the time he or she was first hired into the current or a substantially comparable job?</li> <li>2 Has the employer ever hired anyone with less education, training or experience for a substantially comparable job?</li> </ol>			

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The remainder of Item H of Form ETA 9089 requires the employer to specify the minimum requirements for the job, including minimum education, training, experience, and other special requirements.

In the standard labor certification process under 20 CFR 656.17, an employer must be prepared to document that the specified requirements are its actual minimum requirements and that it has not hired the alien or other workers with less training or experience for jobs that are substantially comparable to the one that is the subject of the labor certification application.

### Authority Cite

#### 20 CFR 656.17(i)

(i) Actual minimum requirements. DOL will evaluate the employer's actual minimum requirements in accordance with this paragraph (i).


(1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity.

(2) The employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.

(3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract employee. The employer can not require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:

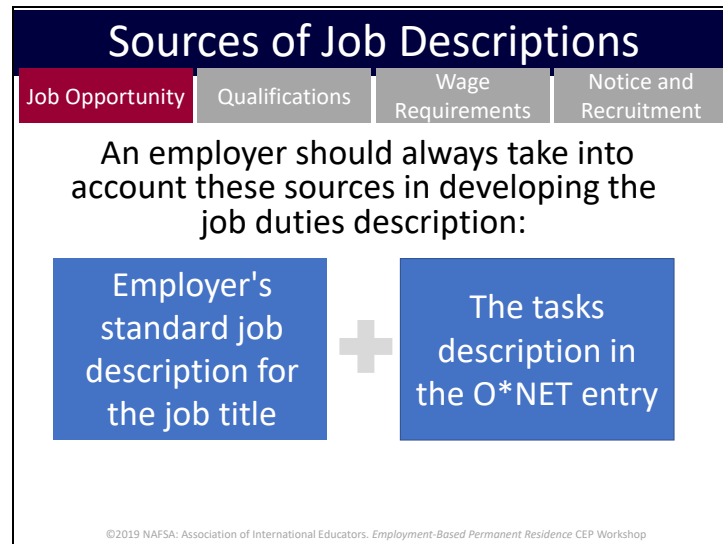
- (i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or
  - (ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.
- (4) In evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements, DOL will not consider any education or training obtained by the alien beneficiary at the employer's expense unless the employer offers similar training to domestic worker applicants.

*Should...* HR be central to this  
job description/job  
requirements  
process? If so, in  
what way?



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An employer should be familiar with its own official job or position descriptions, and use them to develop the labor certification job offer. Requesting requirements that stray too far from the official description may have internal institutional implications. In the event of a DOL audit, an employer must be prepared to document that the job requirements reflected in the application for labor certification truly represent its minimum job requirements. DOL states that actual minimum requirements can be documented by “furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.” [20 C.F.R. § 656.17(i)(5)(ii)]



An employer should always take into account these sources in developing the job duties description:

- The employer's standard job description for the job title, if one exists
- The tasks description in the O\*NET entry

Business Necessity			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<p>Are requirements <i>unduly restrictive</i>?</p> <ul style="list-style-type: none"> <li>• The job duties and requirements reasonably relate to the occupation in the context of the employer's business</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>• The job duties and requirements are essential to perform the job in a reasonable way</li> </ul>			
Source of Authority 		20 CFR 656.17 (h)(1)	

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### Business necessity

If the combined years of experience, education and training required by the employer exceed the upper limit of the SVP code assigned to that occupation, or if the job duties or requirements are not normal to the industry, DOL will infer that they are unduly restrictive. DOL will deny an application for alien labor certification that specifies unduly restrictive requirements, unless the employer can prove that the requirements arise out of "business necessity."

Requirements that would normally be deemed unduly restrictive can sometimes be justified if an employer convincingly establishes that the requirements arise out of "business necessity." DOL evaluates business necessity arguments using a two-prong test, where the employer must demonstrate that:

#### 20 CFR 656.17(h)(1)


Test for business necessity

The job duties and requirements reasonably relate to the occupation in the context of the employer's business; and

The job duties and requirements are essential to perform the job in a reasonable way.

If a position does require special requirements, then a detailed letter from the employer explaining those requirements and their necessity, and any corroborative evidence that supports the assertion, should be developed by the employer. Although documentation supporting a claim of business necessity is not filed with the ETA 9089, the employer would have to produce it in the course of an audit.



Requirements for the Position			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<b>Unduly Restrictive Job Requirements</b>  	<ul style="list-style-type: none"> <li>• Required proficiency in a language other than English [ <a href="#">20 CFR 656.17(h)(2)</a> ]</li> </ul>		
	<ul style="list-style-type: none"> <li>• Years of experience required to perform the job in excess of those specified by the Specific Vocational Preparation (SVP).</li> <li>• College degrees required for jobs where technical school or on-the-job training is all that has been previously been required by the employer or in the industry.</li> <li>• Combining jobs into one that is normally performed by more than one worker.</li> <li>• Knowledge or skills required that cannot be obtained in the United States.</li> </ul>		

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### Avoiding unduly restrictive job requirements

"Requirements are unduly restrictive if they demand skills, knowledge, abilities, and conditions of employment which are not normally required to satisfactorily perform work in the occupation."

Technical Assistance Guide (TAG)


DOL has reasoned that advertising a job with "unduly restrictive" requirements has a "chilling effect on the number of U.S. workers who may apply for or qualify for the job opportunity" [see [Chapter 32, BALCA Judges' Benchbook](#)]. Because of this, both job duties and job requirements must pass a two-pronged test:

[20 CFR 656.17\(h\)\(1\)](#)

The job duties and requirements must be normal to the industry, and

The requirements must not exceed the Specific Vocational Preparation (SVP) level for the occupation as shown in the occupation's O\*NET Job Zone.

These two requirements are separate, but linked, in that if the requirements exceed the SVP level, it will be presumed that they exceed the normal requirements for the occupation, and therefore require a demonstration of business necessity. A job offer can also be found by DOL to be unduly restrictive if the duties or requirements fit within the SVP level, but are not normal to the industry.

ETA 9089 Part H		Job Opportunity Information	
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<p><i>What are the issues when petitioning for a job opportunity that is a combination of occupations?</i></p>			
15. Does this application involve a job opportunity that includes a combination of occupations?		• <input type="radio"/> Yes <input type="radio"/> No	
16. Is the position identified in this application being offered to the alien identified in Section J?		• <input type="radio"/> Yes <input type="radio"/> No	
17. Does the job require the alien to live on the employer's premises?		• <input type="radio"/> Yes <input type="radio"/> No	
18. Is the application for a live-in household domestic service worker?		• <input type="radio"/> Yes <input type="radio"/> No	
18-A. If Yes, have the employer and the alien executed the required employment contract and has the employer provided a copy of the contract to the alien?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<p><b>Source of Authority</b> </p>		<p>20 CFR 656.17 (h)(3)</p>	
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### Special rule for positions with combinations of occupations

Cases where a position combines the duties of one or more occupations into one job (e.g., engineer-pilot) are analyzed under a different standard. An employer can overcome the presumption that a job that combines occupations is unduly restrictive if it can document one of the following:

#### 20 CFR 656.17(h)(3)

It has normally employed persons for that combination of occupations; and/or  
Workers customarily perform the combination of occupations in the area of intended employment; and/or

The combination job opportunity is based on a business necessity



### In Practice: Director of Marketing Ads

<p>Compare each of the Director of Marketing ad descriptions. What are some concerns?</p>	<p>Grouping: Pairs</p>
	<p>Timing: 10 minutes</p>
	<p>Materials: Workbook page 34</p>

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Let' put some of our efforts to the test. There are two job descriptions in your workbook. Consider each of them in light of what we have just learned. What would you flag for correction?

**Ad # 1:**

Director of Marketing and Research for furniture retailer in Washington DC: market research/analysis, prepare cost valuation, pricing strategies and financial reports. BS Business, economics or related field and 2 years exp. in financial analysis. Fax resumes and salary requirements to Yogi Bear (202) 555-5555.

**Ad # 2:**

Director of Marketing and Research: Analyze, identify and develop markets of high growth opportunities and assist in the expansion of the company into those new markets. Assist in the capture and negotiation of new corporate accounts. Recommend pricing strategies after thorough competitive and market research, analysis and cost valuation. Manage and oversee deal structuring and customer leasing and financing. Analyze and assess company's competitive advantage in the marketplace. Prepare and submit financial reports to the president of the company, summarizing the financial health of the company. Conduct product presentation and present project proposals to clients. Position requires individual to build and maintain relationship with clients, vendors and other individuals instrumental to business expansion. Requires: BS in marketing or economics and 2 years' experience in financial analysis. \$40,000 Send two copies of resume to: DOES, 609 H St., NE Room 535, Washington, DC 20002. Reference JO # 5126

Labor Certification and U.S. Workers			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<ul style="list-style-type: none"> <li>• Proffered job must be offered at the actual, minimum requirements</li> <li>• U.S. workers can only be rejected for job-related reasons</li> <li>• DOL will not “certify” a PERM application if a qualified U.S. worker who is ready, willing and able applies for the position</li> <li>• No DOL certification, No PR</li> <li>• Employer is not required to hire the U.S. worker</li> </ul>			
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In the real world, an employer will consider the candidate who is *best* qualified for the job. In the labor certification world, employers can reject a U.S. applicant only on the basis that he or she did not possess one of the required *minimum* qualifications for the job.

It does not matter whether the alien worker is better qualified, unless the alien worker will be employed as a college teacher or is of exceptional ability in the sciences or arts (the only exception to this rule is for college and university teaching positions);

Proffered job must be offered at the actual, minimum requirements

U.S. workers can only be rejected for job-related reasons

DOL will not “certify” a PERM application if a qualified U.S. worker who is ready, willing and able applies for the position

No DOL certification, No PR

Employer is not required to hire the U.S. worker

Employer should look at other PR alternatives including Special Handling

ETA 9089 Part J

## Alien Qualifications

17.	Did the alien complete the training required for the requested job opportunity, as indicated in question H.5?	
18.	Does the alien have the experience as required for the requested job opportunity indicated in question H.6?	
19.	Does the alien possess the alternate combination of education and experience as indicated in question H.8?	
20.	Does the alien have the experience in an alternate occupation specified in question H.10?	
21.	Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?	
22.	Did the employer pay for any of the alien's education or training necessary to satisfy any of the employer's job requirements for this position?	
23.	Is the alien currently employed by the petitioning employer?	

17. Did the alien complete the training required for the requested job opportunity, as indicated in question H.5? ☐ Yes ☐ No ☐ App.

18. Does the alien have the experience as required for the requested job opportunity indicated in question H.6? ☐ Yes ☐ No ☐ App.

19. Does the alien possess the alternate combination of education and experience as indicated in question H.8? ☐ Yes ☐ No ☐ App.

20. Does the alien have the experience in an alternate occupation specified in question H.10? ☐ Yes ☐ No ☐ App.

21. Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested? ☐ Yes ☐ No ☐ App.


22. Did the employer pay for any of the alien's education or training necessary to satisfy any of the employer's job requirements for this position? ☐ Yes ☐ No

23. Is the alien currently employed by the petitioning employer? ☐ Yes ☐ No

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[Click to zoom in] Take care with these alien qualification responses. Did your institution provide training that might also be provided to a qualified U.S. worker?

*Can we...* ensure that the  
beneficiary, who we  
deem most qualified,  
be the one who  
ultimately fills the  
role?



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## General Discussion

Alien Job Qualifications			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<ul style="list-style-type: none"> <li>• Alien's education, experience and training must clearly establish that the alien possesses the minimum job requirements</li> <li>• General rule: Don't require more qualifications than employee had at start of employment unless the experience was gained in a position that is substantially dissimilar- Failure to pay attention may lead to denial at the I-140 immigrant visa stage</li> </ul>			
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If the alien did not possess the minimum requirements at the time of hire, or the employer has previously hired individuals with less education, training, or experience for the job, DOL will view the requirements specified by the employer as not being the actual minimum requirements for the job, unless the employer can document either that:

20 CFR 656.17(i)(3)

The alien gained the experience while working for the employer in a position that was "not substantially comparable to the position for which certification is being sought;" [12.B.2.3 Test for substantial comparability], or

There are significant objective business circumstances that now make it infeasible to train a lesser-qualified individual. [12.B.2.7 Business necessity]

**ETA 9089 Part K**

## Alien Work Experience

**K. Alien Work Experience**  
List all jobs the alien has held during the past 2 years. Also list any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification.

Where do you list the alien's special qualifications?

1. Employer name \*
2. Address 1 \*
3. Address 2 \*
3. City \*
- State
- Province \*
- Country
- Postal code \*
4. Type of Business \*
5. Job Title \*
6. Start date \*
7. End date \*
8. Number of hours worked per week \*
9. Job Details (duties performed, use of tools, machines, equipment, skills, qualifications, certifications, licenses, etc. Include the phone number of the employer and the name of the alien's supervisor) \*

Add This Alien Experience


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- Although it is important to assess the alien's qualifications for the job, employers should approach defining the minimum job requirements based not on what qualifications the alien has, but rather based on the minimum knowledge, skills, and experience and education or training are needed to adequately perform the duties of the job.
- Minimum requirements that exactly "mirror" the alien's qualifications might be suspect on their face as being "overly restrictive." While the skills, knowledge and experience of the employee often serve as a point of reference, those qualifications should not be the factor driving the description of minimum requirements.

### Where do you list the alien's special qualifications?

*Listing the alien's special qualifications on ETA Form 9089.* Unlike prior ETA Form 750-B, the current PERM ETA Form 9089 does not have a separate section for listing the alien's "special qualifications and skills" such as licensures, certifications, or specialized knowledge or skills. If such special qualifications are listed as requirements in item H.14., however, it is important to indicate somewhere on the 9089 that the alien does indeed possess those special qualifications. A convenient place to do this is in the "job details" field at item K.9., which asks for "duties performed, use of tools, machines, equipment, skills, qualifications, certifications, licenses, etc." for experiences and jobs held by the alien.



<h2>Data Analyst</h2>  <p>Skilled Workers</p>	<h3>JOB DESCRIPTION</h3> <p><b>Data Analyst:</b> Assist Astronomers and other research scientists in the reduction and analysis of Wobbli Space Telescope (WST) scientific, calibration, and engineering data. Responsible for providing direct support to research scientists to allow them to reduce and analyze WST scientific data for one instrument using data products, software and hardware provided by NRUSI...</p> <p>Requirements are a BS in astronomy, physics or related field and 3 years exp. in astronomical research support function with strong data analysis experience. Familiarity with Scientific computing; expertise in data analysis; knowledge of IRAF and/or IDL, or other computer software packages and programming ability.</p>
--	--

Let's take a closer look at how we can weigh the job description and qualifications. Let's get to know Misty Classification.

Ms. Misty Classification has been working as a Research Assistant in the National Research University's Space Science Institute for the past three years, first as a Program Coordinator and then as a Data Analyst. The Department sends you this job description.


At your tables continue reading.

**Data Analyst:** Assist Astronomers and other research scientists in the reduction and analysis of Wobbli Space Telescope (WST) scientific, calibration, and engineering data. Responsible for providing direct support to research scientists to allow them to reduce and analyze WST scientific data for one instrument using data products, software and hardware provided by NRUSI; participate in training for research scientists, support in the analysis of WST data; receive, archive, and verify calibration data for completeness and adherence to formats; generate calibration data sets and verification documentation; Assist staff scientists in all phases of astronomical investigation including the collection, reduction, organization, analysis and interpretation of data. Requirements are a BS in astronomy, physics or related field and 3 years exp. in astronomical research support function with strong data analysis experience. Familiarity with Scientific computing; expertise in data analysis; knowledge of IRAF and/or IDL, or other computer software packages and programming ability.

Ms. Classification graduated from York University in Canada with a BS in Astronomy in 2005. She was hired by NRUSI as a Program Coordinator three years ago with the following job description:

Work with the Wobbli Space Telescope proposers and instrument scientists to design and implement observation programs at the forefront of astronomy. Responsibilities include preparing observations for execution on the Wobbli Space Telescope. Two years ago, she was promoted to her current position as a Data Analyst.

NOTE TO TRAINER: Advance to next slide for In Practice activity.



### In Practice: Data Analyst, Job Description and Qualifications

Read the case study and consider the qualifications of the beneficiary.	Grouping: Table
	Timing: 5 minutes
	Materials: Workbook page 38

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At your table, read the facts of the following case and discuss it with the table moderator and your fellow participants. Feel free to discuss any aspect of the case. List the issues you spot in the space provided to the left. Questions are provided after the fact pattern, to focus your inquiry.

Do a quick debrief to highlight some of the concerns.

ETA 9089 Part L
**Alien Declaration**

What guidance do you provide regarding this declaration?

---

**L. Alien Declaration**

*I declare under penalty of perjury that Sections J and K are true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine or imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.*

*In addition, I further declare under penalty of perjury that I intend to accept the position offered in Section H of this application if a labor certification is approved and I am granted a visa or an adjustment of status based on this application.*

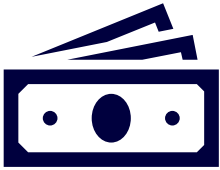
1. Alien's last name	First name	Full middle name
2. Signature	Date signed	

**Note** – The signature and date signed do not have to be filled out when electronically submitting to the Department of Labor for processing, but must be complete when submitting by mail. If the application is submitted electronically, any resulting certification MUST be signed immediately upon receipt from DOL before it can be submitted to USCIS for final processing.

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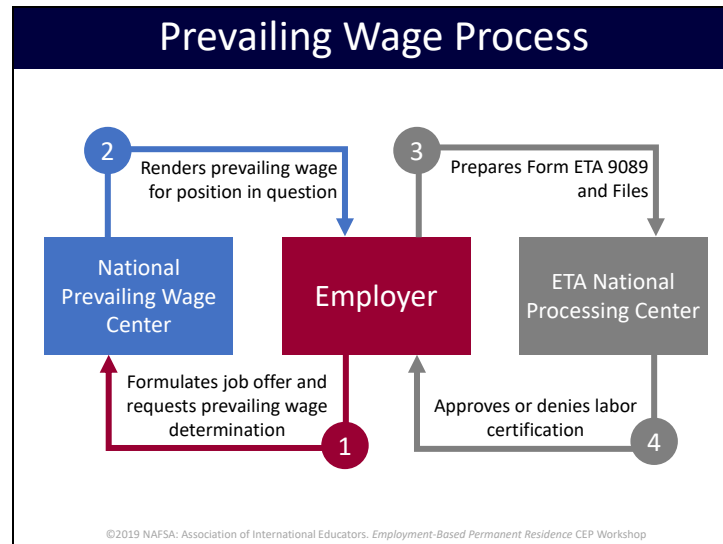
Before we move onto wage, let's pause on part L, which is the alien declaration. What guidance do you provide?

[This is a great time to pause and take a break.]

Prevailing Wage Determinations			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<ul style="list-style-type: none"> <li>Hiring a foreign national employee on a permanent basis must not adversely affect the working conditions and wages of U.S. workers</li> <li>Employer is required to pay the employee at least 100% of the “prevailing wage” for the job</li> </ul>			
		<ul style="list-style-type: none"> <li>PWD provides the “quantitative parameters” to determine the appropriate wage level through the Specific Vocational Preparation (SVP) and job zone standards.</li> </ul>	
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In the real world, the salary offered is set by the market, the type of employer, and negotiation; in the labor certification world, the salary offered has to meet a statistically determined *prevailing wage*.

- Required for all Labor Cert. filings, including Schedule A filings
- Hiring a foreign national employee on a permanent basis must not adversely affect the working conditions and wages of U.S. workers
- Employer is required to pay the employee at least 100% of the “prevailing wage” for the job
- PWD provides the “quantitative parameters” to determine the appropriate wage level through the Specific Vocational Preparation (SVP) and job zone standards.



The work on the job description in stage 1 will be critical in establishing the prevailing wage.

After receiving the employer's ETA Form 9141, the NPWC will:

- Examine the employer's job description and requirements and assign an SOC/O\*NET occupational code classification to the job.
- Consider non-OES wage sources submitted by the employer
  - If a collective bargaining agreement (CBA) wage is involved, the NPWC will consider that wage to be the prevailing wage.
  - If there is no CBA, but the employer has submitted wage survey data, the NPWC will first consider the employer-provided wage data. If the employer-provided data is acceptable, the NPWC will use it to make its prevailing wage determination.
- If there is no collective bargaining agreement, and the employer does not provide a survey or request a DBA/SCA wage determination, then the NPWC will assign a wage level (from Level 1 to Level 4) to the job, and use the wage component of the DOL Occupational Employment Statistics (OES) Survey to determine the prevailing wage.
- ACWIA employers should identify themselves as an ACWIA employer on the ETA Form 9141, as recommended by DOL.
- The NPWC will then issue the prevailing wage determination (PWD)

ETA 9089 Part F, G		Prevailing Wage Determinations	
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<b>F. Prevailing Wage Information (as provided by the State Workforce Agency)</b>			
1. Prevailing wage tracking number (if applicable):	<input type="text"/>		
2. SOC/O*NET (OES) Code:	* <input type="text" value="Select SOC Code"/>		
3. Occupation title:	* <input type="text"/>		
4. Skill level:	<input type="text" value="Select Level"/>		
5. Prevailing wage:	* \$ <input type="text"/> Per * <input type="text" value="Select Wage Period"/>		
6. Prevailing wage source:	* <input type="text" value="Select Wage Source"/>		
6-A. If Other is indicated in question 6, specify:	<input type="text"/>		
7. Determination date:	* <input type="text"/> <input type="text"/> <input type="text"/> Enter date as mm/dd/yyyy		
8. Expiration date:	* <input type="text"/> <input type="text"/> <input type="text"/> Enter date as mm/dd/yyyy		
<b>G. Wage Offer Information</b>			
1. Offered wage:	From: * \$ <input type="text"/> To: (Optional) \$ <input type="text"/> Per * <input type="text" value="Select Wage Period"/>		

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First take a look at section G. It shows the offered wage. This needs to be 100% or higher than the prevailing wage determination.

The wage offer in section G needs to be supported with information and supporting documentation shared in section F. Take a look at the form. But how we get to this information is a process—one that requires time and the collaboration of multiple people.

Notes on Section F:

At item F.2.: Standard Occupational Classification (SOC) code (or O\*NET/OES extension) specific to the occupation listed in the prevailing wage determination request.

Further information concerning SOC codes can be found at: <http://ows.doleta.gov/foreign/>

At item F.3.: The occupational title associated with the SOC/O\*NET(OES) code as determined by the NPWC

At item F.5.: the prevailing wage figure obtained from the NPWC

At item F.6 (and F.6.A. if applicable): the prevailing wage source (see 8.A Sources of prevailing wage data used by the NPWC)

The choices are: Occupational Employment Statistics (OES), Collective Bargaining Agreement (CBA), Employer Conducted Survey, Davis-Bacon Act (DBA), McNamara-O'Hara Service Contract Act (SCA), or Other. If Other is chosen the source must be specified. The source used by the NPWC should be found on the PWD itself.



### Employer-provided wage

Wage data provided by an employer to the NPWC must meet DOL regulatory and policy standards to serve as the basis for an NPWC prevailing wage determination.

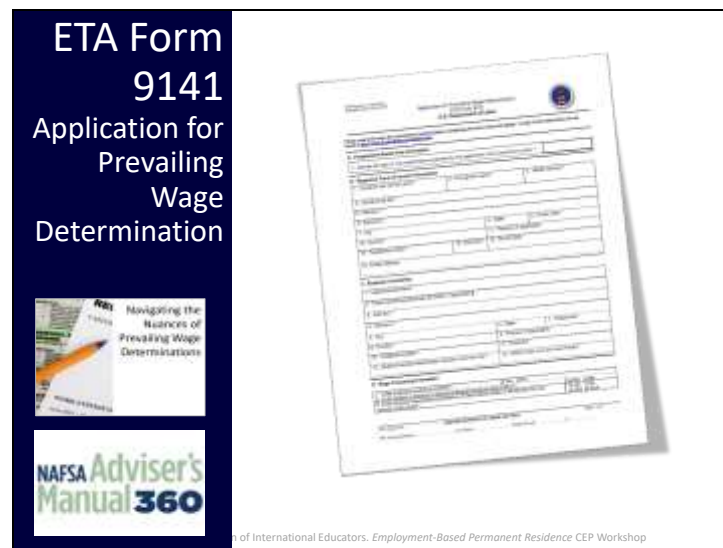
### **DOL regulations and policies on employer-provided wage data**

These regulations and policies establish the specific requirements for employer-provided wage surveys, including:

- The survey must be the most recent available  
The survey must reflect wages in area of intended employment
- The survey must reflect wages of workers similarly employed
- The survey must reflect wages across industries, unless covered by the ACWIA exception to the cross-industry standard
- The survey must be based on valid data and valid statistical methodologies

DOL prevailing wage policy guidance incorporates the regulatory standards into a unified standard for employer-provided wage surveys, so employers must be familiar with that guidance. The next two subsections will discuss both DOL regulations and DOL policy guidance.






[Note to Trainer: The ETA Form 9141 is needed for a prevailing wage determination. However, the slides that follow are hidden. For timing reasons, we recommend that you do not walk through completing the ETA form 9141. ]

Refer participants to the additional resources are noted in their workbooks, which includes a section dedicated to prevailing wage. As well as the NAFSA eLearning seminar Navigating the Nuances of Prevailing Wage Determinations.

However, if you find that participants need specific instruction about these forms, the form 9141 and its instructions are found in the table reference. The following slides are hidden but can be revealed to highlight specific areas you feel is necessary to address your learners' needs.

## ETA Form 9141




The image shows the front of the ETA Form 9141, titled 'Employment-Based Permanent Residence'. It is a form for the U.S. Department of Labor, used for the Employment-Based Permanent Residence (EBPR) process. The form includes sections for the employer's information, the employee's information, and the employer's statement of intent. The form is divided into several parts, including a header section, a section for the employer's information, a section for the employee's information, and a section for the employer's statement of intent. The form is a standard government form with a header, a title, and several sections for information entry. The form is titled 'ETA Form 9141' and is used for the Employment-Based Permanent Residence (EBPR) process. The form is a standard government form with a header, a title, and several sections for information entry. The form is titled 'ETA Form 9141' and is used for the Employment-Based Permanent Residence (EBPR) process.

U.S. Department of Labor, Employment-Based Permanent Residence CEP Workshop

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## ETA Form 9141




The image shows the front of the ETA Form 9141, titled 'Application for Employment-Based Permanent Residence'. The form is issued by the Department of Homeland Security, U.S. Department of Labor. It includes sections for: 1. Basic Information (Applicant's name, date of birth, country of birth, etc.), 2. Employment Information (Employer's name, address, and details about the job offer), 3. Education and Training (Applicant's educational background), 4. Skills and Experience (Applicant's professional skills and work history), 5. References (Names and addresses of references), and 6. Signature and Date (Signatures of the applicant and employer). The form is designed to be filled out by the employer and the applicant.

Application of International Educators, Employment-Based Permanent Residence CEP Workshop

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**ETA Form 9141**



The image shows the ETA Form 9141, titled "Application for Processing Foreign Information". The form is from the U.S. Department of Labor, dated 12/14/2010. It is divided into two main sections: "I. Background and Information" and "II. Place of Employment Information". Section I includes fields for the applicant's name, address, and contact information, as well as a section for the employer's information. Section II includes fields for the employer's name, address, and contact information, as well as a section for the employee's information. The form is designed to be filled out by the employer and the employee, and it is used to process foreign information for the purpose of employment in the United States.

Application for Processing Foreign Information  
U.S. Department of Labor

**I. Background and Information**

1. Applicant's Name (Last, First, Middle Initial)  
2. Applicant's Address (Street, City, State, ZIP+4)  
3. Applicant's Telephone Number (Area Code, Number)  
4. Applicant's E-mail Address  
5. Applicant's Date of Birth (Month, Day, Year)  
6. Applicant's Social Security Number (SSN)  
7. Applicant's Alien Registration Number (A-Number)  
8. Applicant's Employment Authorization Document (EAD) Number  
9. Applicant's Current Employment Status (Full-time, Part-time, Seasonal, etc.)  
10. Applicant's Current Employer's Name and Address  
11. Applicant's Current Employer's Telephone Number  
12. Applicant's Current Employer's E-mail Address  
13. Applicant's Current Employer's Website  
14. Applicant's Current Employer's Business Type  
15. Applicant's Current Employer's Industry  
16. Applicant's Current Employer's Description of Duties  
17. Applicant's Current Employer's Description of Responsibilities  
18. Applicant's Current Employer's Description of Supervisory Duties  
19. Applicant's Current Employer's Description of Training Duties  
20. Applicant's Current Employer's Description of Other Duties


**II. Place of Employment Information**

21. Employer's Name (Last, First, Middle Initial)  
22. Employer's Address (Street, City, State, ZIP+4)  
23. Employer's Telephone Number (Area Code, Number)  
24. Employer's E-mail Address  
25. Employer's Date of Birth (Month, Day, Year)  
26. Employer's Social Security Number (SSN)  
27. Employer's Alien Registration Number (A-Number)  
28. Employer's Employment Authorization Document (EAD) Number  
29. Employer's Current Employment Status (Full-time, Part-time, Seasonal, etc.)  
30. Employer's Current Employer's Name and Address  
31. Employer's Current Employer's Telephone Number  
32. Employer's Current Employer's E-mail Address  
33. Employer's Current Employer's Website  
34. Employer's Current Employer's Business Type  
35. Employer's Current Employer's Industry  
36. Employer's Current Employer's Description of Duties  
37. Employer's Current Employer's Description of Responsibilities  
38. Employer's Current Employer's Description of Supervisory Duties  
39. Employer's Current Employer's Description of Training Duties  
40. Employer's Current Employer's Description of Other Duties

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## ETA Form 9141




The image shows the front of an ETA Form 9141, titled 'Application for Permanent Residence'. It includes sections for 'Applicant Information', 'Employment Information', and 'Comments'. The form is dated 12/14/2017 and is issued by the U.S. Department of Labor. The form number 9141 is prominently displayed at the top right.

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<div> <div> Data Analyst </div> <div>  Skilled Workers </div> </div>																					
<div> <div> <div>Prevailing Wage Results</div> <table> <tr> <td>Area</td><td>0720 (Baltimore, MD PMSA)</td></tr> <tr> <td>OES/SOC Code</td><td>19-4099</td></tr> <tr> <td>OES/SOC Title</td><td>Life, physical, and social science technicians, all other</td></tr> <tr> <td>O*Net Occupation Code</td><td>19-4061.00 (Click for Definition)</td></tr> <tr> <td>O*NET Occupation</td><td>Social Science Research Assistants</td></tr> <tr> <td>Level 1 Wage</td><td>\$11.18 hour - \$23,254 year</td></tr> <tr> <td>Level 2 Wage</td><td>\$15.31 hour - \$31,845 year</td></tr> <tr> <td>Level 3 Wage</td><td>\$19.45 hour - \$40,456 year</td></tr> <tr> <td>Level 4 Wage</td><td>\$23.58 hour - \$49,046 year</td></tr> <tr> <td>Job Zone</td><td>NA</td></tr> </table> </div> </div>		Area	0720 (Baltimore, MD PMSA)	OES/SOC Code	19-4099	OES/SOC Title	Life, physical, and social science technicians, all other	O*Net Occupation Code	19-4061.00 (Click for Definition)	O*NET Occupation	Social Science Research Assistants	Level 1 Wage	\$11.18 hour - \$23,254 year	Level 2 Wage	\$15.31 hour - \$31,845 year	Level 3 Wage	\$19.45 hour - \$40,456 year	Level 4 Wage	\$23.58 hour - \$49,046 year	Job Zone	NA
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Level 4 Wage	\$23.58 hour - \$49,046 year																				
Job Zone	NA																				

After submitting the Form 9141, you have received the wage level for Misty Classification.

The Department is offering a salary of \$25,000. The prevailing wage comes back from the NPWC as \$49,046, based on the OES survey wage data shown below. What might the issues be with these results, and what are the possible next steps?

Ms. Misty Classification has been working as a Research Assistant in the National Research University's Space Science Institute for the past three years, first as a Program Coordinator and then as a Data Analyst. The Department sends you the job description contained in the Workbook.

NOTE TO TRAINER: Advance to next slide for an In Practice activity.



### In Practice: Institutional Policy

<p>Prevailing Wage is TOO HIGH!! What now?</p> <ul style="list-style-type: none"><li>• Discuss how your institution will address issues relating to prevailing wage</li></ul>	Grouping: Pairs, small groups
	Timing: 10 minutes
	Materials: Workbook page 43-44

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Recall the case of Ms. Misty Classification has been working as a Research Assistant in the National Research University's Space Science Institute for the past three years, first as a Program Coordinator and then as a Data Analyst. You have received the prevailing wage.

Notice of Filing			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<p>PERM notice must include:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Employer name</li> <li><input type="checkbox"/> Job title</li> <li><input type="checkbox"/> Location</li> <li><input type="checkbox"/> Duties</li> <li><input type="checkbox"/> Minimum requirements</li> <li><input type="checkbox"/> Salary (not lower than prevailing wage) unless utilizing special handling process for teaching positions</li> </ul>			

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Before the process ends remember that we have to do our due diligence to seek out U.S. workers. That requires us to go through a very specific process of both notify and recruiting for the position.

The general requirements include: [this is in the workbook]

- Notices of the filing of the labor certification application must:
- Be provided between 30 and 180 days before filing the application;
- State the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;
- State that any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor;
- Provide the address of the appropriate Certifying Officer (Since all PERM cases are processed by the Atlanta National Processing Center (NPC), the notice must include the mailing address of the Atlanta NPC.



ETA 9089 Part I

Notice of Filing

Job Opportunity
Qualifications
Wage Requirements
Notice and Recruitment

**e. General Information - All must complete this section**

23. Has the employer received payment of any kind for the submission of this application ?    ☐ Yes    ☐ No

23-A. If Yes, describe details of the payment including the amount, date and purpose of the payment:

24. Has the bargaining representative for workers in the occupation in which the alien will be employed been provided with notice of this filing at least 30 days but not more than 180 days before the date the application is filed?    ☐ Yes    ☐ No    ☐ N/A

25. If there is no bargaining representative, has a notice of this filing been posted for 10 business days in a conspicuous location at the place of employment, ending at least 30 days before but not more than 180 days before the date the application is filed?    ☐ Yes    ☐ No    ☐ N/A

26. Has the employer had a layoff in the area of intended employment in the occupation involved in this application or in a related occupation within the six months immediately preceding the filing of this application?    ☐ Yes    ☐ No

26-A. If Yes, were the laid off U.S. workers notified and considered for the job opportunity for which certification is sought?    ☐ Yes    ☐ No    ☐ N/A

Previous Page
Next Page
Save As Draft
Reset Yes/No Selections
Cancel

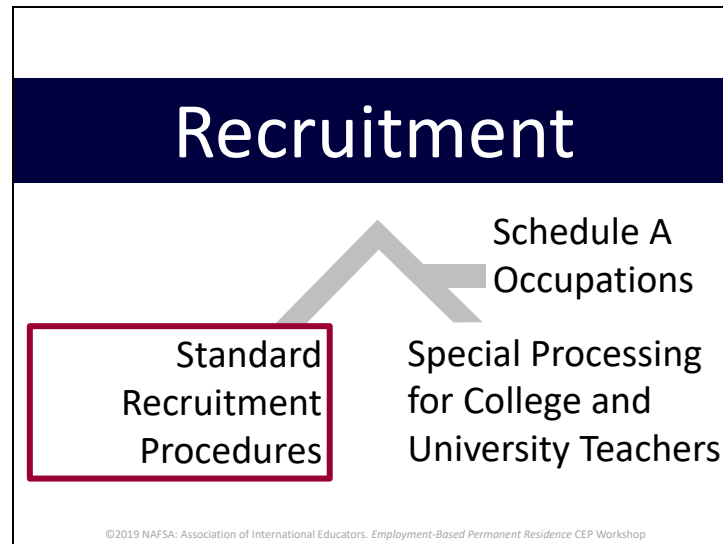
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Remember, the notice is not a job ad. How does the response to question 24 and 25 impact your procedures?

Giving Notice			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<p>Employer must provide notice that it will file a labor certification application.</p> <ul style="list-style-type: none"><li>• <b>Union positions:</b> Notice to bargaining representative</li><li>• <b>Non-union positions:</b> Paper notice of filing must be posted for 10 <u>business</u> days (weekends, holidays don't count, unless open for business) where other employees can see</li><li>• <b>Where else?</b></li></ul>			

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There are specific requirements for notice depend on union or non-union positions.



When it comes to recruitment there are different paths that can be taken. First let's start with standard recruitment.

Recruitment and Filing			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<ul style="list-style-type: none"><li>• Carefully establish job requirements</li><li>• Document that employee met job requirements at time of hire</li><li>• Create advertisements and conduct mandatory recruitment carefully</li><li>• Choose additional recruitment vehicles strategically</li><li>• Post notice for 10 consecutive business days (or notice to union), note dates and place of posting</li><li>• Use in-house media (intranet, newsletter) if employer usually posts such notices there</li></ul> <small>©2019 NAFSA: Association of International Educators. Employment-Based Permanent Residence CEP Workshop</small>			

Standard recruitment would have you goes through a series of steps to recruit for the position.

Standard Provisions with PERM	
<input type="checkbox"/> A 30-day SWA (State Workforce Agency) Job Order	
<input type="checkbox"/> Two print advertisements	
<input type="checkbox"/> Providing internal notice of the job opportunity	
<input type="checkbox"/> The employer must also engage in three separate additional recruitment steps (out of a list of 10 possible options)	
<input type="checkbox"/> After evaluating and interviewing U.S. worker applicants, the employer must prepare a recruitment report describing its recruitment effort and results	
Source of Authority 	20 CFR 656.17
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The regulations detail what you must collect and retain copies of the following.

- Job order
- Place ad with State Workforce Agency (SWA) job bank for 30 days
- Advertisements in newspaper or professional journal
- Two Sundays in most appropriate newspaper of general circulation in area of employment
- If job requires experience and advanced **degree, a professional journal ad would be normal, employer may place advertisement in professional journal in lieu of one Sunday newspaper ad**

ETA 9089 Part I
Recruitment Information

### How does the response to questions 1 and 2 change your process for recruitment?

Recruitment Information

**Occupation Type - All must complete this section.**

1. Is this application for a **professional occupation**, other than a college or university teacher? Professional occupations are those for which a bachelor's Degree (or equivalent) is normally required? ☐ Yes ☐ No

2. Is this application for a college or university teacher? ☐ Yes ☐ No

**If Yes, complete questions 2-A and 2-B below.**

2-A. Did you select the candidate using a competitive recruitment and selection process? ☐ Yes ☐ No

2-B. Did you use the basic recruitment process for professional occupations? ☐ Yes ☐ No

**b. Special Recruitment and Documentation Procedures for College and University Teachers - Complete only if the answer to question 1a.2-A is Yes.**

3. Date alien selected  Enter date as mm/dd/yyyy

4. Name and date of national professional journal in which advertisement was placed:

5. Specify additional recruitment information in this space. Add an attachment if necessary:

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Ask: How does the response to questions 1-2 affect your process for recruitment. If you are recruiting for a college or university teacher you will undergo special processing, which we will address after we address standard recruitment.

ETA 9089 Part I

## Recruitment Information

**I. Recruitment Information Continued**

12. Date of second newspaper advertisement or date of publication of journal identified in question 11:

From: To:

**d. Professional Recruitment Information – Complete if the answer to question 1.a.1 is YES or if the answer to 1.a.2-6 is YES. Complete at least 3 of the items.**

13. Dates advertised at job fair	14. Dates of on-campus recruiting
From: To:	From: To:
15. Dates posted on employer web site	16. Dates advertised with trade or professional organization
From: To:	From: To:
17. Dates listed with job search web site	18. Dates listed with private employment firm
From: To:	From: To:
19. Dates advertised with employee referral program	20. Dates advertised with campus placement office
From: To:	From: To:
21. Dates advertised with local or ethnic newspaper	22. Dates advertised with radio or TV ads
From: To:	From: To:

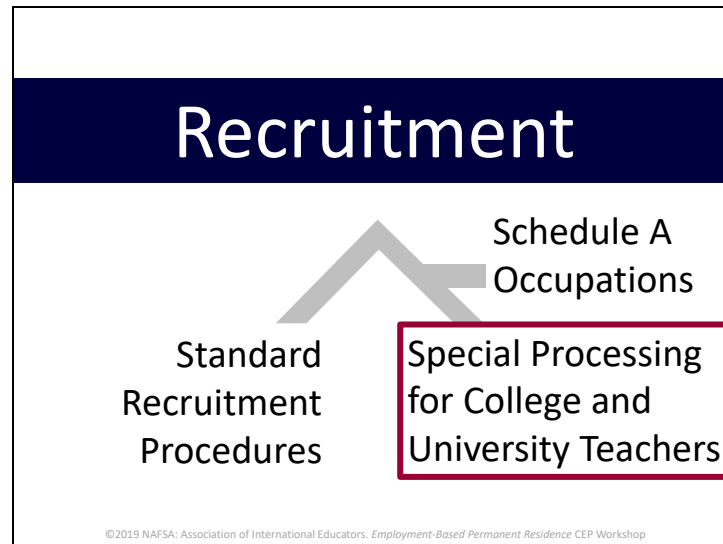
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The form continues and requires you to note the different recruitment efforts. [click to enlarge]

Additional Recruitment	
<b>Select three of the following:</b>	
<input type="checkbox"/> Job fairs	<input type="checkbox"/> Private employment firms/placement agencies
<input type="checkbox"/> Employer's web site	<input type="checkbox"/> Employee referral program
<input type="checkbox"/> Job search web site (other than the employer's site)	<input type="checkbox"/> Campus placement office
<input type="checkbox"/> On-campus recruiting	<input type="checkbox"/> "Local" or "ethnic" newspaper
<input type="checkbox"/> Trade or professional organizations	<input type="checkbox"/> Radio and television advertisements
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Share some examples about how you typically recruit for standard positions.





### **Special provisions for college or university teachers**

Labor certification applications for college and university teachers are also filed by submitting a Form ETA 9089 with the appropriate ETA application processing center, but applications for such positions benefit from unique treatment relating to the recruitment requirement:

The standard for evaluating U.S. applicants is whether the alien was found to be *more* qualified than any of the U.S. workers who applied for the job.

#### **authority cite**


#### **20 C.F.R. § 656.18(b) and (d)**

This is a particularly advantageous standard, because it allows a college or university employer to move forward with a labor certification for an individual who was determined to be the best qualified for the job. In non-college/university teaching positions the standard is whether any U.S. workers who applied for the job possessed the minimum requirements for the job, and rejection of a U.S. worker who has the minimum requirements is a ground for denying the labor certification application, even if the alien is better qualified.

An employer can choose between two recruitment and documentation options for such positions:

**Standard** recruitment and documentation under 20 C.F.R. § 656.17, or

**Special** recruitment and documentation under 20 C.F.R. § 656.18. This option allows a college or university employer to use the results of its own competitive recruitment procedure that resulted in the selection of the alien, provided the application is filed no later than 18 months after the alien was selected.

Special Handling PERM Process			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<input type="checkbox"/> A statement signed by an official who has actual hiring authority from the employer, outlining in detail the complete recruitment procedure undertaken.			
<input type="checkbox"/> A final report from the faculty, student, and/or administrative body making the recommendation or selection of the alien, at the completion of the competitive recruitment and selection process.			
<input type="checkbox"/> Documentation of a print or electronic advertisement for the position, that conforms to one of the following:			
<input type="checkbox"/> A copy of at least one <b>print</b> advertisement for the job opportunity placed in a <b>national professional journal</b>			
<input type="checkbox"/> Documentation of an advertisement placed in an <b>electronic or web-based national professional journal</b>			
Source of Authority 			20 CFR 656.18
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The special recruitment documentation provisions are generally more advantageous than the standard provisions, because it allows a school to use the competitive recruitment procedure that it has already undertaken to fill the teaching position. Although the employer is allowed to select the best-qualified college or university teacher under both paths, if the school opts for standard recruitment, it is still subject to the same extensive pre-filing recruitment procedures that other standard filing cases are subject to (e.g., a SWA Job Order, 2 advertisements, 3 additional recruitment steps, etc.). The comparison table can help illustrate this.

Circumstances where an employer might choose standard processing include:

- the 18-month filing deadline was missed and the school is either unwilling or unable to conduct another competitive recruitment procedure;
- the position was not filled though a competitive recruitment procedure (e.g., it was for a research position that also includes some teaching).

Special Handling: The National Ad			
Job Opportunity	Qualifications	Wage Requirements	Notice and Recruitment
<b>Print Advertisement</b> in nationally circulated professional journal		<b>Ad must include:</b> <ul style="list-style-type: none"><li>• The start date</li><li>• The end date</li><li>• The text wording</li><li>• job title</li><li>• duties</li><li>• requirements</li></ul>	
<b>Electronic or Web-based Advertisement</b> in national professional journal for 30 calendar days			

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Print Advertisement in a professional journal that is nationally circulated, including discipline-specific or general journal such as: *Chronicle of Higher Education*.


Electronic or web-based advertisement in a national professional journal for 30 calendar days with evidence of:

- the start date
- the end date
- the text wording

*Proof of advertisement must be kept in the audit file.*



Institutional policy discussion. What is your institutional policy about advertisement for teaching faculty. Who are the people that you need to be training to make sure the ad contains what is needed?



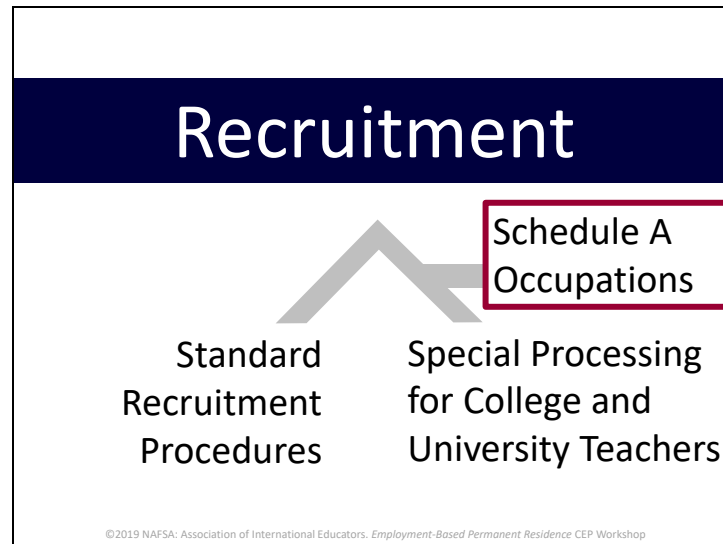
### In Practice: Assistant Professor Special Handling

<p>Read and discuss the facts of the case of Dr. Imatov Yakunin.</p> <ul style="list-style-type: none"> <li>List the issues you spot in the space provided in the Workbook.</li> <li>Respond to the questions.</li> </ul>	<p>Grouping: Table</p>
	<p>Timing: 10 minutes</p>
	<p>Materials: Workbook page 50</p>

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Dr. Imatov Yakunin, an Assistant Professor of Physics and Astronomy who was recently promoted into a tenure-track faculty position. After obtaining his Ph.D. 3 years ago from the University of Kiev in Ukraine, Dr. Yakunin began working at National Research University as a Visiting Instructor in J-1 exchange visitor status. He has a limited publication record, but is starting to get some recognition in the field. Two years ago, the University ran ads in the Chronicle of Higher Education and in the leading journals for astronomical research. Five candidates, including Dr. Yakunin, were selected by the search committee for interviews. After lengthy deliberations, Dr. Yakunin was offered and accepted the job six months ago. Dr. Yakunin will primarily conduct research in black holes. He will be expected to teach an undergraduate course in astronomy.

- Discuss the relevance of Dr. Yakunin's teaching duties to a college/university professor labor certification application. Is one course enough to qualify? What if instruction does not take place in a classroom (i.e., teaching of students in a lab, or in a clinical environment) - can it count?
- Assuming his teaching duties are enough to qualify him for 656.18 special filing, how much time do you have to prepare and file the labor certification and request special handling without having to re-advertise?
- What if the committee had offered the job first to another individual who declined the offer because the salary was too low and Dr. Yakunin, the committee's second choice, was then offered the position. Would that impact the application in any way?



Schedule A Occupations require PWDs and notice requirements but are exempt from recruitment procedures.

**§656.15 Applications for labor certification for *Schedule A* occupations.**

(a) *Filing application.* An employer must apply for a labor certification for a *Schedule A* occupation by filing an application with the appropriate DHS office, and not with an ETA application processing center.

(b) *General documentation requirements.* A *Schedule A* application must include:

(1) An *Application for Permanent Employment Certification* form, which includes a prevailing wage determination in accordance with §§656.40 and 656.41.

(2) Evidence that notice of filing the *Application for Permanent Employment Certification* was provided to the bargaining representative or the employer's employees as prescribed in §656.10(d).

(c) *Group I documentation.* An employer seeking labor certification under Group I of *Schedule A* must file with DHS, as part of its labor certification application, documentary evidence of the following:


(1) An employer seeking *Schedule A* labor certification for an alien to be employed as a physical therapist (§656.5(a)(1)) must file as part of its labor certification application a letter or statement, signed by an authorized state physical therapy licensing official in the state of intended employment, stating the alien is qualified to take that state's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only under this §656.15 and not under §656.17.

(2) An employer seeking a *Schedule A* labor certification for an alien to be employed as a professional nurse (§656.5(a)(2)) must file as part of its labor certification application documentation that the alien has received a Certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS); that the alien holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment; or that the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN). Application for certification of employment as a professional nurse may be made only under this §656.15(c) and not under §656.17.


(d) *Group II documentation.* An employer seeking a *Schedule A* labor certification under Group II of *Schedule A* must file with DHS, as part of its labor certification application, documentary evidence of the following:

(1) An employer seeking labor certification on behalf of an alien to be employed as an alien of exceptional ability in the sciences or arts (excluding those in the performing arts) must file documentary evidence showing the widespread acclaim and international recognition accorded the alien by recognized experts in the alien's field; and documentation showing the alien's work in that field during the past year did, and the alien's intended work in the United States will, require exceptional ability. In addition, the employer must file documentation about the alien from at least two of the following seven groups:


# EB-3



Employment –  
Based  
Preferences




IT Professionals



Other Staff

## 3<sup>rd</sup> Preference

- Professionals and skilled workers (requiring 2 or more years of specific education, training, or experience)
- Other (unskilled) workers

Source of Authority 

INA 203(b)(3)

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Here is a look at the categories for the Third Preference (EB-3) Orientation.



## EB-3

Schedule A Occupations

Schedule A filing is mandatory for nurses and physical therapists.

Group I:	Group II:
<ul style="list-style-type: none"> <li>Physical Therapists</li> <li>Professional Nurses</li> </ul>	<ul style="list-style-type: none"> <li>Aliens of extraordinary ability</li> </ul>

For Schedule A filings, DOL does not process Form ETA 9089, and so that form should not be submitted online to DOL, but rather printed and submitted to USCIS.

### Schedule A Occupations

Schedule A is comprised of certain occupations, as set forth at 20 CFR 656.15, for which DOL has determined there are not sufficient U.S. workers who are able, willing, qualified and available. In addition, Schedule A establishes that the employment of aliens in such occupations will not adversely affect the wages and working conditions of U.S. workers similarly employed.

The occupations listed under Schedule A include:

#### Group I

Physical Therapists - who possess all the qualifications necessary to take the physical therapist licensing examination in the state in which they propose to practice physical therapy; and

Professional Nurses - the alien (i) has a Commission on Graduates in Foreign Nursing Schools (CGFNS) Certificate, (ii) the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) exam, or (iii) the alien holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

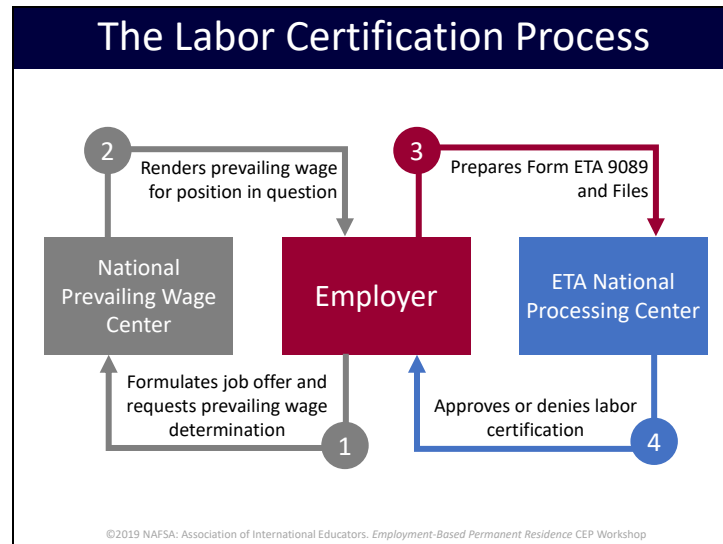
#### Group II

Sciences or arts (except performing arts) - Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.

Performing arts - Aliens of exceptional ability in the performing arts whose work during the past 12 months did require, and whose intended work in the United States will require, exceptional ability.

An employer must apply for a labor certification for a Schedule A occupation by filing an ETA Form 9089, in duplicate, with the appropriate USCIS Service Center, and NOT with DOL.

For more information about the Permanent regulation that went into effect on March 28, 2005, and details regarding filing, please review our FAQs [HERE](#).



After receiving the prevailing wage determination and completing recruitment you can complete the form and file it with the ETA National Processing Center.

## Form ETA 9089

### Application for Permanent Employment Certification


Job Opportunity

Alien's Qualifications

PERM Wage Requirements

Notice and Recruitment Requirements

Labor Cert Procedures and Determination




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In your workbook there is a summary of the filing proceedings that you must complete before you file.

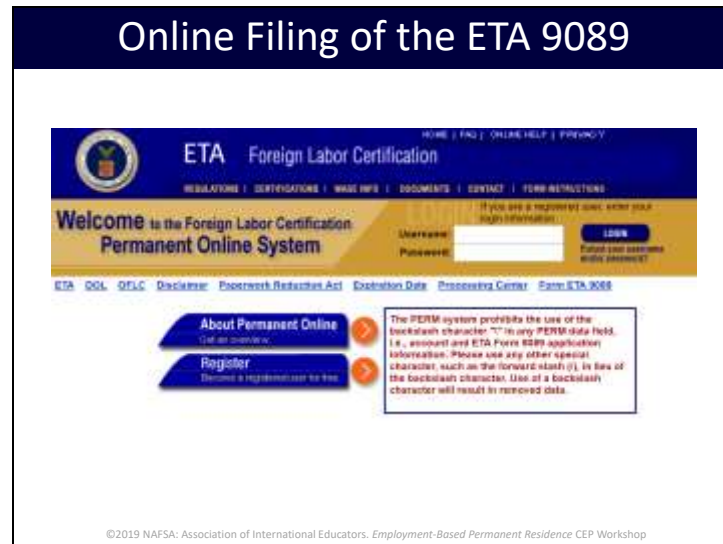
## Labor Certification Procedures

- Review applications to see if applicants meet requirements and reject in writing if they don't
- Prepare thorough recruitment report and audit file
- Wait 30 days after last step – but no more than 180 days after first step – before filing ETA-9089 online
- Meticulous attention to detail in filing ETA-9089
- If audited, respond timely and with thorough required evidence

 Labor Cert Procedures and Determination

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In this final stage of labor certification procedures you will want to consider each of these best practices.



File ETA-9089 in DOL's PERM system

## Recruitment Report and Audit File

Prepare audit file to be retained for 5 years including:



- ☐ Recruitment report— describes recruitment, #of applicants/hires, job-related reasons U.S. applicants didn't meet requirements
- ☐ Documentation of recruitment (ads, etc.)
- ☐ Documentation of notice of filing
- ☐ Eventually add copy of signed, certified ETA 9089

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Because you are filing online, you will need to prepare an audit file to keep record of your recruitment efforts and search efforts. Wait 30 days after completion of last step (“rest period”). But remember, no recruitment can be more than 180 days old when ETA-9089 is filed

ETA 9089 Part M		Preparer Declaration	
<i>Who is considered the preparer?</i>			
<b>M. Declaration of Preparer</b>			
1. Was the application completed by the employer? If No, you must complete this section.		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>I hereby certify that I have prepared this application at the direct request of the employer listed in Section C and that to the best of my knowledge the information contained herein is true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine, imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.</i>			
2. Preparer's last name		First name	Middle initial
3. Title			
4. E-mail address			
5. Signature		Date signed	
<small>Note - The signature and date signed do not have to be filled out when electronically submitting to the Department of Labor for processing, but must be complete when submitting by mail. If the application is submitted electronically, any resulting certification MUST be signed immediately upon receipt from DOL before it can be submitted to USCIS for final processing.</small>			
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### Authorized Parties

Two types of users are allowed to prepare PERM applications using the online system:  
Employers, and  
Employer's Attorneys or Agents

The employer must register to use the PERM online system. The registration feature is available for employers only. After registering, employers can create sub-accounts for their employees or attorneys, so that these users can submit PERM applications on behalf of the registered employer. Those registered as an employer can manage multiple employees and attorney/agents using the PERM Online system.

### Employees, Attorneys, and Agents

Employers can create and manage user accounts for their employees, attorneys or agents. Only the employer can create sub-accounts under their employer account. Users with sub-accounts can enter, edit, reuse, and withdraw PERM applications, but they cannot create new user accounts or edit the employer's business information.



ETA 9089 Part N
Employer Declaration

**N. Employer Declaration**

*By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment:*


1. The offered wage equals or exceeds the prevailing wage and I will pay at least the prevailing wage.
2. The wage is not based on commissions, bonuses or other incentives, unless I guarantee a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage.
3. I have enough funds available to pay the wage or salary offered the alien.
4. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.
5. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.
6. The job opportunity is not:
  - a. Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or
  - b. At issue in a labor dispute involving a work stoppage.
7. The job opportunity's terms, conditions, and occupational environment are not contrary to Federal, state or local law.
8. The job opportunity has been and is clearly open to any U.S. worker.
9. The U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons.
10. The job opportunity is for full-time, permanent employment for an employer other than the alien.

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[Click to zoom] The employer must certify to the following wage conditions as part of the Employer Declaration found at Part N of the ETA 9089.:

**20 CFR 656.10(1)-(4)**

- (1) The offered wage equals or exceeds the prevailing wage determined pursuant to §656.40 and §656.41, and the wage the employer will pay to the alien to begin work will equal or exceed the prevailing wage that is applicable at the time the alien begins work or from the time the alien is admitted to take up the certified employment;
- (2) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a prevailing wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage;
- (3) The employer has enough funds available to pay the wage or salary offered the alien;
- (4) The employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States;

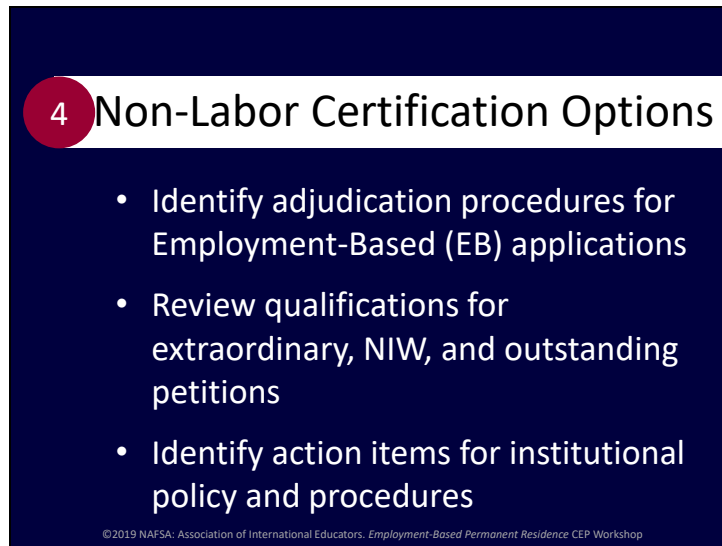


### In Practice: Institutional Procedures for Labor Certification

Use the employer declaration to draw a flowchart mapping the step and the responsible party for each stage. <ul style="list-style-type: none"><li>• Who shares the responsibility?</li><li>• Where are there gaps?</li><li>• Where do you need more support?</li></ul>	Grouping: Individual
	Timing: 10 minutes
	Materials: Workbook page 55

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Because this process is so complex, requiring the coordination of several parties, it's helpful to step back and map out each step.

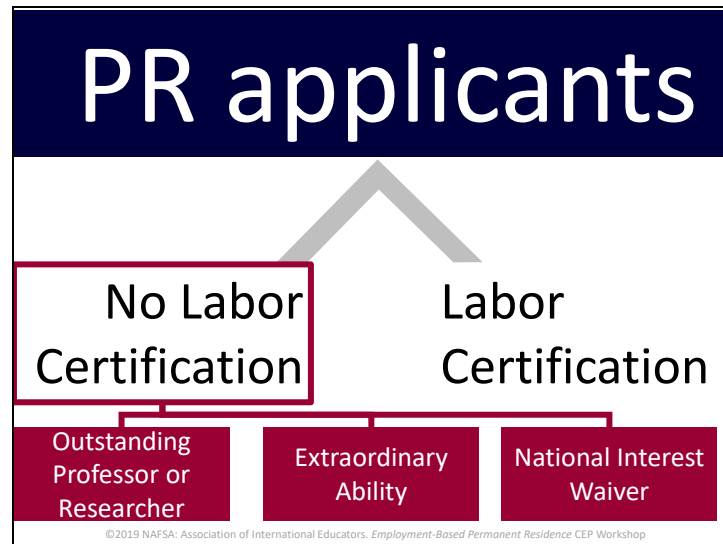


4 Non-Labor Certification Options

- Identify adjudication procedures for Employment-Based (EB) applications
- Review qualifications for extraordinary, NIW, and outstanding petitions
- Identify action items for institutional policy and procedures

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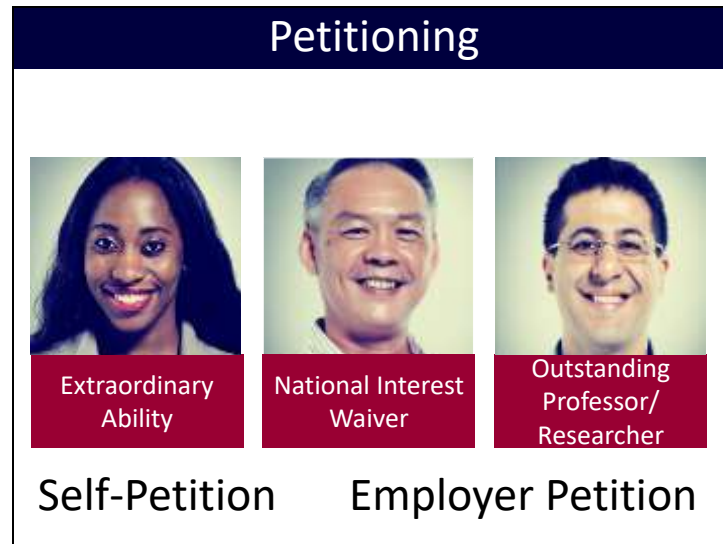
Now, let's take a closer look at the EB Preference System.



### The labor certification requirement

Generally, all aliens who want to immigrate to the United States for employment purposes must have an individual “alien labor certification” approved by the Department of Labor. The labor certification requirement is placed in the law as a ground of “inadmissibility,” i.e., you will be excluded from immigrating to the United States to work, unless you have a labor certification. Unit 3 discusses the labor certification requirement in detail.

Some preference categories, however, are exempt from the labor certification requirement entirely, and other preferences have a few exceptions.



INA § 203(b)(1)(A) establishes the E11 (E one-one) preference category, which allows aliens to seek lawful permanent residence based on their extraordinary ability in the sciences, arts, education, business, or athletics. Petitioners must document their I-140 filing with evidence that the alien meets the statutory and regulatory definitions of extraordinary ability.

Because they are exempt from the requirement of an individual labor certification and from the requirement of a specific job offer from a U.S. employer, aliens of extraordinary ability can choose between self-petitioning or having a U.S. employer petition on their behalf. In either case, the Form I-140 is filed with the USCIS Dallas Lockbox (see 13.C The I-140 Employment-Based Immigrant Petition).



The specific laws concerning lawful permanent residence reflect how the United States makes choices about who can live and work permanently in this country.

Working with this particular set of regulations can be frustrating. This is especially true when a law or regulation can sway with the politics of the moment.

Relevant INA Statutes	
Immigration & Nationality Act (INA)	
INA 203(b)(1)(B)	Outstanding Professor/Researcher
INA 203(b)(1)(A)	Alien of Extraordinary Ability
INA 203(b)(2)(B)(i) and INA 203(b)(2)(B)(ii)	National Interest Waiver

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All regulations and procedures in immigration law derive from the Immigration and Nationality Act (INA) which is then put into effect by federal agencies such as the Department of Homeland Security (DHS), Department of Labor (DOL) and the Department of State (DOS).

Relevant Regulations	
8 CFR 204.5 (i)(3)	Outstanding Professor/Researcher
8 CFR 204.5(h)(3)-(4)	Aliens of Extraordinary Ability
8 CFR 204.5(k)(4)(ii)	National Interest Waiver

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Beyond the INA, there are further regulations to consider; those can be found in the Code of Federal Regulations (CFR).



## USCIS Adjudication Standard

Evidentiary standard in USCIS adjudications:  
Preponderance of the Evidence

- Evidentiary standard for administrative processes is established by the Administrative Procedures Act and decisions applying the Act
- Generally construed to mean that approval “demands only 51% certainty,” or that the evidence more likely than not warrants approval
- USCIS guidance recognizes “preponderance of the evidence” applies to its decisions

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USCIS guidance recognizes “preponderance of the evidence” applies to its decisions, cont.

October 19, 2010 precedent decision [Matter of Chawathe, Interim Decision #3700, 25 I&N Dec. 369 (AAO 2010)], the Administrative Appeals Unit (AAO) confirmed that the “preponderance of the evidence” standard of proof is used in most immigration proceedings, stating:

In most administrative immigration proceedings, the applicant must prove by a **preponderance of evidence** that he or she is eligible for the benefit sought

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant has satisfied the standard of proof

If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition

It can be useful to remind, very politely, adjudicating officers of this standard

## Kazarian Process Analysis

Step 1

USCIS adjudicators evaluate whether **evidence meets any of the regulatory criteria**.


The determination in Part One is limited to determining whether the evidence submitted with the petition is comprised of at least two of the six regulatory criteria as discussed in the next slide, applying a preponderance of the evidence standard.

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USCIS policy guidance interprets and applies the 9<sup>th</sup> Circuit Court’s *Kazarian v. USCIS* decision of March 4, 2010 in a determination whether evidence submitted meets any of the regulatory criteria.


Kazarian Process Analysis	
<b>Step 2</b>	USCIS adjudicators must consider all of the evidence in totality in making the final merits determination as to whether petitioner has demonstrated, by a <b>preponderance of the evidence</b> , that the alien is outstanding/is recognized internationally as outstanding in the academic field specified in the petition.
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It is the PREPONDERANCE of the evidence that determines whether or not the alien meet the applicable criteria.

<b>EB-1</b> Outstanding Professor or Researcher	<b>Criteria for Outstanding Professor/ Researcher</b>		
	<ul style="list-style-type: none"><li><input type="checkbox"/> At least three years of experience in the field</li><li><input type="checkbox"/> Tenured/Tenure-track (professor) or permanent (researcher) offer of employment</li><li><input type="checkbox"/> Evidence in at least two of the following →</li></ul>		
Senior-level Researcher	<table border="0"><tr><td data-bbox="667 779 836 875"><b>Source of Authority</b> </td><td data-bbox="836 779 1159 875"><b>INA 203(b)(1)(B)</b></td></tr></table> <small>of International Educators. Employment-Based Permanent Residence CEP Workshop</small>	<b>Source of Authority</b> 	<b>INA 203(b)(1)(B)</b>
<b>Source of Authority</b> 	<b>INA 203(b)(1)(B)</b>		


Ask: How many of you work with this category.

- The outstanding professor or researcher classification is an excellent option for individuals who are outstanding in their field, but who may not have risen to the level necessary to prove extraordinary ability.
- This route to LPR requires an offer of a tenured or tenure-track teaching position or an equivalent (permanent) research position

<b>EB-1</b>	<b>Criteria for Outstanding Professor/ Researcher</b>
<b>Outstanding Professor or Researcher</b>	<ul style="list-style-type: none"><li><input type="checkbox"/> Original scientific or scholarly contributions to the field</li><li><input type="checkbox"/> Authorship of scholarly books or articles</li><li><input type="checkbox"/> Published material about applicant's work</li><li><input type="checkbox"/> Participation, individually or on a panel, judging the work of others</li><li><input type="checkbox"/> Receipt of major prizes or awards for outstanding achievement</li><li><input type="checkbox"/> Membership in an organization that requires outstanding achievement</li><li><input type="checkbox"/> Other comparable evidence</li></ul>
	
<b>Senior-level Researcher</b>	

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Consider the criteria needed for outstanding professor. The information that you provide needs to support the category not only per your own standards but also the person who will be reviewing that information.



### In Practice: Outstanding Professor Case

<p>Consider the eligibility criteria for Outstanding Professor or Researcher in relation to the case. Discuss whether the two letters provide enough support for this category.</p>	<p>Grouping: Pairs</p>
	<p>Timing: 10 minutes</p>
	<p>Materials: Workbook page 61</p>

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*Evaluate this case to assess Dr. Knowsall's eligibility for the Outstanding Professor or Researcher route to permanent residence.*



Bombast Knowsall has been offered a tenure-track position by the Department of Education and Child Development at Knott Realia University (KRU) as an Assistant Professor. Dr. Knowsall received his Ph.D. in Education from the National Research University five years ago. His Ph.D. dissertation quickly became the talk of the educational community as he introduced a novel theory on how to teach math and sciences to children in elementary school. Some journals hailed him as a “bright young voice in the dark abyss of science” while others scoffed that he was a flash in the pan and his techniques would not work. Three progressive schools in Iceland adopted his techniques and in the four years since implementing them, have noticed a slight (2%) increase in student performance on standardized tests. Since his dissertation, he has been a postdoctoral fellow, has published two additional papers, has spoken at several national and international conferences, and has been interviewed by the local news. KRU is eager to hire this innovative thinker and is hoping he will revitalize their department. Dr. Knowsall is Canadian and most anxious to begin work. Reader's Digest has given him a \$50,000 grant to continue his research at Knott Realia University where he will remain on payroll.

List the issues relevant to eligibility for classification as an Outstanding Professor or Researcher. Evaluate how well the two letters support a case for Outstanding Professor or Researcher classification.

<h1>EB-1</h1>	<h2>Extraordinary Ability</h2>	
		<ul style="list-style-type: none"> <li>▪ No labor certification required</li> </ul>
	<p>Tenured (-Track) Professor</p>	<ul style="list-style-type: none"> <li>▪ Individual may self-petition</li> <li>▪ “Permanent” job offer not required</li> <li>▪ Form I-140, Immigrant Petition for Alien Worker, filed directly with the USCIS, together with supporting documentation</li> </ul>
		<p>Source of Authority  INA 203(b)(1)(A)</p>

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This classification is intended for people who are at the very top of their fields and are recognized as leaders. The regulations say that sustained acclaim and recognition in the field of expertise can be proved by showing either that the alien has received a major national or international prize (such as the Nobel Prize), or by submitting proof of meeting at least three of the alternative criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(ix). Most aliens will qualify on the basis of providing evidence that fits the alternative criteria.

<b>EB-1</b> <b>Extraordinary Ability</b>	<b>Criteria of Extraordinary Ability</b> <ul style="list-style-type: none"><li>• Petition must include evidence that alien has sustained national or international acclaim and that achievements have been recognized in the field of expertise per 8 CFR 204.5(h)(3)</li><li>• Evidence must include a one-time internationally recognized award (Nobel Prize, Academy Award, etc.), or...</li></ul>
 Tenured (-Track) Professor	<b>Source of Authority</b>  <b>8 CFR 204.5(h)(2-3)</b>
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### Specific Criteria (8 CFR 204.5(h)(3))

The individual must possess a level of expertise indicating that s/he is one of that small percentage who has risen to the very top of the field of endeavor (8 CFR 204.5(h)(2)).



Criteria of Extraordinary Ability	
<p>At least three of the following:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Receipt of lesser nationally or internationally recognized prizes or awards</li> <li><input type="checkbox"/> Membership in associations that require outstanding achievements</li> <li><input type="checkbox"/> Professional or major trade publications or other major media</li> <li><input type="checkbox"/> Participation, either individually or on a panel, as a judge of the work of others in the same or in an allied field</li> <li><input type="checkbox"/> Original scientific / scholarly contributions of major significance in the field</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Authorship of scholarly articles in the field, in professional or major trade publications, or other major media</li> <li><input type="checkbox"/> Commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales</li> <li><input type="checkbox"/> Display of the individual's work in the field at artistic exhibitions/showcases</li> <li><input type="checkbox"/> Individual has performed in a leading or role for organizations or establishments that have a distinguished reputation</li> <li><input type="checkbox"/> Individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field</li> </ul>

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Consider the criteria required for extraordinary ability. Take a look in the workbook where we have featured a sample letter detailing that ability.

Form I-140, Part 2		Petition Type	
<i>Which of the following petition types is exempt from Labor Certification?</i>			
<b>Part 2. Petition Type</b>			
This petition is being filed for: (Select only one box.)			
<input type="checkbox"/> i.a.	An alien of extraordinary ability.	<input type="checkbox"/> i.g.	Any other worker (requiring less than 2 years of training or experience).
<input type="checkbox"/> i.b.	An outstanding professor or researcher.	<input type="checkbox"/> i.h.	(Reserved)
<input type="checkbox"/> i.c.	A multinational executive or manager.	<input type="checkbox"/> i.i.	An alien applying for a National Interest Waiver (who <b>IS</b> a member of the professions holding an advanced degree or an alien of exceptional ability).
<input type="checkbox"/> i.d.	A member of the professions holding an advanced degree or an alien of exceptional ability (who is <b>NOT</b> seeking a National Interest Waiver).	<b>Check below if this petition is being filed:</b>	
<input type="checkbox"/> i.e.	A professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree).	<input type="checkbox"/> 2.a.	To amend a previously filed petition. Previous Petition Receipt Number: <input type="text"/>
<input type="checkbox"/> i.f.	A skilled worker (requiring at least 2 years of specialized training or experience).	<input type="checkbox"/> 2.b.	For the Schedule A, Group I or II designation.
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We won't get into the forms quite yet, but it is helpful to see that the form I-140 requests the petition type. This will determine how it will be processed as well as what documentation will be needed in support of the petition.

# EB-2



Employment –  
Based  
Preferences



Post-doctoral  
Researchers



Junior-level  
Researchers

## 2<sup>nd</sup> Preference




- Members of professions holding **advanced degrees**
- Aliens of **exceptional ability** in the sciences, arts, or business

Source of Authority 

INA 203(b)(2)

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**Advanced degree** or bachelor's degree + 5 required for the proffered job  
**Exceptional Ability** Must possess a degree of expertise above ordinary

<b>EB-2</b> National Interest Waiver	Waives permanent job offer and labor certification requirements.		
	<ul style="list-style-type: none"><li>• the sciences</li><li>• arts</li><li>• professions</li><li>• business</li></ul>		
<table border="0"><tr><td><b>Source of Authority</b> </td><td>INA 203(b)(2)(B)(i) 8 USC 1153(b)(2)(B)(i)</td></tr></table>		<b>Source of Authority</b> 	INA 203(b)(2)(B)(i) 8 USC 1153(b)(2)(B)(i)
<b>Source of Authority</b> 	INA 203(b)(2)(B)(i) 8 USC 1153(b)(2)(B)(i)		

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The requirement of a job offer from a U.S. employer can be waived if the services of an alien that qualifies under the employment-based second preference are determined to be in the "national interest."

Must show applicant specially qualified for the work, key member of a team, could not be replaced, or that job could not be performed by person meeting usual minimum requirements (for instance, researcher with just Ph.D. could not do the job, special skills/experience required).

The Immigration and Nationality Act permits National Interest Waivers (NIW) to aliens who will provide services in the following general fields:

INA 203(b)(2)(B)(i); 8 USC 1153(b)(2)(B)(i)

the sciences

arts

professions

business

**Historical Examples:** A permanent job offer and the labor certification requirements might be waived for foreign scientists brought to the U.S. to work on projects involving vital national security interests. Actual examples from the past include:

**Edward Teller** who was born in Budapest, Hungary and educated in Germany. He became an American citizen in 1941. He participated in the Manhattan project with Enrico Fermi and other top scientists in the 1940s. He is the principal architect of America's hydrogen bomb.

**Enrico Fermi** was born in Rome, Italy and immigrated to the U.S. to escape Fascist political harassment (His wife was Jewish.). Winner of the 1938 Nobel Prize in Physics, he was instrumental in creating the first controlled nuclear fission chain reaction at the University of Chicago in 1942 which helped pave the way for America's development of the atomic bomb.

**C. Niels Bohr** was a Danish physicist and a Nobel laureate who made basic contributions to the structure of the atom. In 1939, he alerted scientists in the U.S. to the importance of experiments being done in Nazi Germany on nuclear fission. During the Nazi occupation of Denmark, he escaped to Sweden and eventually to the U.S. where he joined in the development of the first atomic bomb. After the war, he returned to Denmark where he pursued the cause of peaceful uses for atomic energy.

This category requires similar types of evidence as that for outstanding professors.

Expert opinion letters are crucial.

### Criteria for Proving National Interest


<b>Dhanasar Prong 1</b>	The foreign national's proposed endeavor has both substantial merit and national importance
<b>Dhanasar Prong 2</b>	The foreign national is well positioned to advance the proposed endeavor
<b>Dhanasar Prong 3</b>	On balance, it would be beneficial to the United States to waive the job offer and labor certification requirements

There is a different NIW process for physicians

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The following criteria must be met in order to qualify for an NIW.

Please note that there is a different NIW process for physicians.



### In Practice: Circumstances for National Interest Waivers

<p>The requirement of a job offer from a U.S. employer can be waived if the services of an alien that qualifies under the employment-based second preference are determined to be in the "national interest."</p>	<p>Grouping: Table</p>
	<p>Timing: 5 minutes</p>
	<p>Materials: Workbook page 75</p>

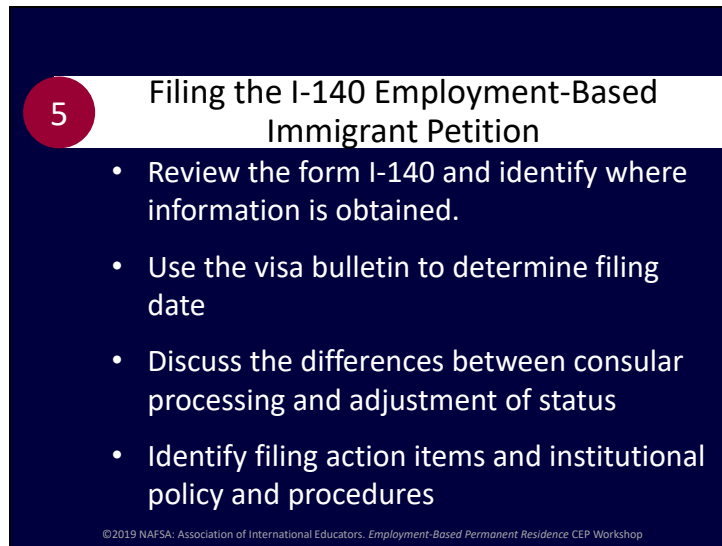
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- Dr. Liu is a new researcher who just received his Ph.D. diploma and does not have three years of professional experience. The scientific research being conducted by his research group may lead to break through diagnostic tools and treatments for a particular disease.
- Dr. Granitskaya's position is a temporary one and therefore the institution is unwilling to process employment based permanent residence on her behalf.
- Mr. Proal does not want to be tied to one employer and therefore wishes to retain an attorney and self-petition for permanent residence.



Discuss which of these categories are sponsored. What policies need to be in place for these petitions? Who is charged to assemble the preponderance of evidence.





**5** Filing the I-140 Employment-Based Immigrant Petition

- Review the form I-140 and identify where information is obtained.
- Use the visa bulletin to determine filing date
- Discuss the differences between consular processing and adjustment of status
- Identify filing action items and institutional policy and procedures

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In this section, we will:

## Form I-140 Immigrant Petition for Alien Worker

The image shows the Form I-140, Immigrant Petition for Alien Worker, issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services. The form is titled 'Form I-140' and 'Immigrant Petition for Alien Worker'. It includes sections for 'Petitioner Information', 'Alien Information', 'Employer Information', and 'Petitioner's Statement'. The form is filled out with various details, including the petitioner's name, address, and the alien's name and address. The form is dated 03/01/00 and is the first page of a two-page document.


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Those layers of effort pay off. You are now ready to complete the form I-140. The form itself is not terribly complicated, but it does require that your prior work be included.

Components of Form I-140	
Part 1	Information about the Petitioner
Part 2	Petition Type
Part 3	Information about Person Filing
Part 4	Processing Information
Part 5	Additional Information about the Petitioner
Part 6	Proposed Employment
Part 7	Spouse and All Children
Part 8	Statement, Contact, Declaration and Signatures
Part 9	Interpreter Information
Part 10	Preparer Information
Part 11	Additional Information

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The form is divided into 11 sections, which we are going to give you a chance of reviewing.



### In Practice: Completing the Form I-140

<p>Review your assigned sections of the form and the instructions. In your group:</p> <ul style="list-style-type: none"><li>• Identify where to find the information needed to complete the form</li><li>• Who is responsible for finding it</li><li>• Highlight areas where the information may be unclear where further discussion is needed</li></ul>	Grouping: Table
	Timing: 10 minutes
	Materials: Workbook page 78-87

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NOTE TO TRAINER: Assign sections of the form to tables.

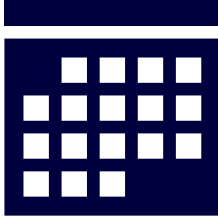
Please open up the separate slide presentation for the form I-140 to use as you debrief this section.

## Priority Dates

*What is a Priority Date?*  
A Priority Date (PD) is the date a Labor Certification is filed with DOL, or if no Labor Certification is required, the date the I-140 petition is filed with DHS.

*Why is a Priority Date important?*  
A PD determines when an individual can apply for and receive an immigrant visa or adjustment of status to lawful permanent residence.

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- *What is a Priority Date?*


A Priority Date (PD) is the date a Labor Cert is filed with DOL, or if no Labor Cert. is required, the date the I-140 petition is filed with DHS.

*2) Why is a PD important?*

A PD determines when an individual can apply for and receive an immigrant visa or adjustment of status to lawful permanent residence.

## Visa Bulletin

Priority date cut-off dates are published mid-month in the DOS monthly Visa Bulletin



[://travel.state.gov/visabulletin](https://travel.state.gov/visabulletin)

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### Priority dates, waiting lists, and the Visa Bulletin

There is frequently more demand for employment-based immigrant visa slots than there is availability. A preference category can become *oversubscribed* in two ways: either the total category availability has been reached, or the per-country limit for that category has been reached.

When a category becomes oversubscribed either in its entirety or for a particular country, a waiting list develops. A person's place on the waiting list is determined by his or her "priority date," which is the date that a labor certification application was first filed on his or her behalf with the Department of Labor, or, for those categories exempt from the labor certification requirement, the date on which a preference petition was filed on his or her behalf with USCIS. Source: Adviser's Manual 360

The image is a screenshot of the USCIS website page titled "Visa Bulletin Filing Charts". The page has a dark blue header with the title in white. Below the header, the main content area is white. It starts with the section "Adjustment of Status Filing Charts from the Visa Bulletin". The text explains that if USCIS determines there are more immigrant visas available for a fiscal year than there are known applicants, it will state on the page that users may use the "Dates for Filing Visa Applications" chart. Otherwise, they must use the "Application Final Action Dates" chart. It mentions that USCIS anticipates designating one of the two charts each month and linking to the relevant chart within one week of the DOS' publication of the Visa Bulletin. Below this, there is a section titled "Current Month's Adjustment of Status Filing Charts". It lists two categories: "For Family-Sponsored Filings:" and "For Employment-Based Preference Filings:". For both, it states that users must use the "Dates for Filing" chart in the Department of State Visa Bulletin for February 2018. At the bottom of the main content area, there is a grey box with two checkmarks and the text "Application Final Action Dates" and "Dates for Filing Applications". Below this box is the URL [www.uscis.gov/visabulletininfo](https://www.uscis.gov/visabulletininfo). At the very bottom of the page, there is a small copyright notice: "©2019 NAFSA: Association of International Educators. Employment-Based Permanent Residence CEP Workshop".

## Visa Bulletin Filing Charts

### Adjustment of Status Filing Charts from the Visa Bulletin

If USCIS determines that there are more immigrant visas available for a fiscal year than there are known applicants for such visas, we will state on this page that you may use the **Dates for Filing Visa Applications** chart. Otherwise, we will indicate on this page that you must use the **Application Final Action Dates** chart to determine when you may file your adjustment of status application.

We anticipate designating one of the two charts each month and linking to the relevant chart below within one week of DOS' publication of the **Visa Bulletin**.

#### Current Month's Adjustment of Status Filing Charts

**For Family-Sponsored Filings:**  
You must use the Dates for Filing chart in the Department of State Visa Bulletin for **February 2018**.

**For Employment-Based Preference Filings:**  
You must use the Final Action Dates chart in the Department of State Visa Bulletin for **February 2018**.

- ✓ Application Final Action Dates
- ✓ Dates for Filing Applications

[www.uscis.gov/visabulletininfo](https://www.uscis.gov/visabulletininfo)

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Each month, USCIS will determine whether it will allow adjustment of status applicants to file their adjustment applications according to the dates in the **Dates for Filing Visa Applications** chart, rather than the **Application Final Action Dates** chart.

Unless otherwise stated on the USCIS website at <https://www.uscis.gov/visabulletininfo>, applicants must use the Application Final Action Date chart to determine when they may file their adjustment of status applications within a given month.

Although every visa bulletin will show both the "Final Action Dates" and the "Dates for Filing" charts, adjustment of status applicants must refer to the **USCIS website** at <https://www.uscis.gov/visabulletininfo> to which chart USCIS will use for a particular month. DOS is careful to state in its Visa Bulletin that:

"Unless otherwise indicated on the U.S. Citizenship and Immigration Services (USCIS) website at [www.uscis.gov/visabulletininfo](https://www.uscis.gov/visabulletininfo), individuals seeking to file applications for adjustment of status with USCIS in the Department of Homeland Security must use the "Final Action Dates" charts below for determining when they can file such applications. When USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants for such visas, USCIS will state on its website that applicants may instead use the "Dates for Filing Visa Applications" charts in this Bulletin."

USCIS expects that it will update its website within one week of the appearance of DOS' monthly Visa Bulletin.

Slide 139

Final Action Dates for EB Preferences						
Currently authorized and applications may be filed			Currently unauthorized for this month, no applications			
Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	01OCT13	C	08DEC08	C	C
3rd	C	15SEP14	C	01DEC06		01MAR16
Other Workers	C	01FEB07	C	01DEC06	C	01MAR16
4th	C	C	01DEC15	C	22JUN16	C
Certain Religious Workers	U	U	U	U	U	U
5th Non-Regional Center (CS and T5)	C	22JUL14	C	C	C	C
5th Regional Center (I5 and R5)	U	U	U	U	U	U

## Final Action Dates

Three indicators might be found in the Visa Bulletin charts:

- "C" means "current," i.e., an immigrant visa number is "currently authorized" and that applications may be filed (or approved, depending on the chart) in that category that month regardless of the applicant's priority date.;
- "U" means an immigrant visa number is currently "unauthorized" for the month in question, and that no applications may be filed (or approved, depending on the chart) in that category that month;

**Trainer Note:** The image in the workbook is slightly updated (representing December 2018). The example there is from earlier in 2018, but provides examples of "U", which were not in the updated screen shot.



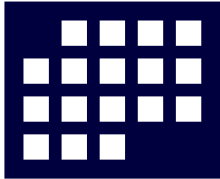
Dates for Filing EB Visa Applications						
Applications may be filed if the prospective applicant's priority date falls BEFORE the date referenced						
Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	15NOV14	C	08FEB09	C	C
3rd	C	01JAN16	C	01JAN08	C	01AUG16
Other Workers	C	01JUN08	C	01JAN08	C	01AUG16
4th	C	C	15APR16	C	C	C
Certain Religious Workers	C	C	15APR16	C	C	C
5th Non-Regional Center (C5 and T5)	C	01SEP14	C	C	C	C
5th Regional Center (I5 and R5)	C	01SEP14	C	C	C	C

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A specific date means that applications may be filed (or approved, depending on the chart) in that category if the prospective applicant's priority date falls *before* the date referenced.

## Priority Dates and Retrogression

*What is Priority Date Retrogression?*




When a country or category uses more visa numbers than are available, visa retrogression will occur.

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3) *What is PD retrogression?* When a country or category uses more visa numbers than are available, visa retrogression will occur.

4) *Is there any way an applicant can avoid using his/her place of birth for PD purposes?*

Alternate derivative chargeability allows the visa number for a principal applicant to be charged to the country of birth of the accompanying spouse



### In Practice: Reading the Visa Bulletin

Look at each of the potential applicants and determine whether you can apply at this time.	Grouping: Small Groups
	Timing: 5 minutes
	Materials: Workbook page 91

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What date are we talking about for the Visa Bulletin?

1. Note that the date of the labor cert or the PERM filing or the date of the I-140 determines the “priority date.” The participants need that piece of information in order to make sense of the Visa Bulletin exercise.
2. Why does this matter to the beneficiary?


<h2>Advising about Visa Priority Dates</h2>	<ul style="list-style-type: none"><li>• Encourage scholars to track priority date movement for themselves</li><li>• Immigrant visa availability is cyclical, October begins a new fiscal year and opens a new set of visa numbers</li><li>• Changes in demand can cause retrogression</li><li>• Set up a tickler system to alert when to prepare application materials for the final step in attaining permanent residency</li></ul> <p><small>© 2019 Association of International Educators. Employment-Based Permanent Residence CEP Workshop</small></p>
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Some fundamental advising concepts to keep in mind:

- Not all scholars will be affected by or need to track their priority dates. For those who do, it is very helpful to give the individual the Web site for the Visa Bulletin and have him or her track the movement of their priority date for themselves.
- Immigrant visa availability is cyclical, i.e., it follows a pattern as the numbers move through the fiscal year. In practical terms, this means that there is little “movement” in the priority dates during the summer because all the numbers have been used. There is new availability in October of each year since that is the beginning of the fiscal year.
- Availability does not move forward on a month-by-month basis. Since availability is a function of a variety of factors, spikes in demand may occur or miscalculations must be accounted for. Occasionally availability retrogresses.

Since an individual cannot submit the final application for permanent residency until there is an immigrant visa available in their category, it is important for advisers to establish a “tickler” system on these dates. This allows the adviser to alert the individual a month or so in advance that he or she should begin to prepare the application materials for the final step in attaining permanent residency (I-485 packages or consular processing.)


*What if...*the country or category  
has exceeded the  
number of visas that  
are available?



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### Group Discussion

*What if...* our beneficiary is  
nearing the end of their  
H-1B visa?





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## H-1B Extensions

### Group Discussion

NOTE TO TRAINER: Advance to next slide for further information on H-1B Extensions.

H-1B Post-6-Year Extensions	
<ul style="list-style-type: none"><li>• Three years is the maximum timeframe you can file one I-129 H-1B petition</li><li>• Standard 240-day rule applies while extension petition pending</li><li>• H-4 granted extension based on principal's extension</li></ul>	<p>Extensions in increments of one year, if more than 365 days have passed since filing of ETA-9089 or I-140</p> <p><b>Source of Authority</b>  AC 21 106(a)</p> <p>Three-year extensions, indefinitely, if I-140 approved and priority date is not current</p> <p><b>Source of Authority</b>  AC 21 104(c)</p>

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Extensions in increments of one year, if more than 365 days have passed since filing of ETA-9089 or I-140

- Can be pending or approved, and H-1B employer doesn't have to be PR employer
- If Labor Certification expires before I-140 filed, labor certification cannot serve as basis for extension.
- Denied or revoked LC or petition cannot serve as basis for extension unless there was a timely-filed "appeal" to DOL/BALCA or AAO.
- Must file for adjustment of status or an immigrant visa within 1 year of a visa number becoming available, or not eligible for extension



Three-year extensions, indefinitely, if I-140 approved and priority date is not current

- Premium processing of I-140 can be useful in facilitating H-1B extensions beyond 6 years
- Available regardless of whether employee is in U.S. or abroad, so not really an "extension of stay" but rather an additional period of H-1B authorization
- May request remainder of 6-year period plus 7th year with one petition



Encourage tables to share best approaches to sharing realities and expectations about priority dates and the preference system.



Approval or Denial of I-140 Petitions	
 <p>If USCIS <b>approves</b> an employment-based petition, USCIS will either:</p> <ul style="list-style-type: none"><li>• Forward the approval to the <a href="#">National Visa Center</a> (NVC) of the Department of State if the beneficiary resides outside of the United States.</li><li>• If the Form I-140 petition indicates that the alien has filed or will file an application for adjustment of status to permanent residence (Form I-485), USCIS will retain the approved visa petition for consideration with an adjustment of status application.</li></ul>	 <p>If USCIS <b>denies</b> an EB-1, 2, 3, or 4 petition, it will inform the petitioner of the reasons for denial, and of the right to appeal the denial to the USCIS <a href="#">Administrative Appeals Office</a> (AAO).</p>

### Approval or denial of I-140 petitions

If USCIS **approves** an employment-based petition, USCIS will either:

Forward the approval to the National Visa Center (NVC) of the Department of State if the beneficiary resides outside of the United States.


If the Form I-140 petition indicates that the alien has filed or will file an application for adjustment of status to permanent residence (Form I-485), USCIS will retain the approved visa petition for consideration with an adjustment of status application.

If USCIS **denies** an EB-1, 2, 3, or 4 petition, it will inform the petitioner of the reasons for denial, and of the right to appeal the denial to the USCIS Administrative Appeals Office (AAO).

## Revocation of Approved I-140 Petitions

*What if...*

- the employer/petitioner of an approved I-140 later withdraws the petition under [8 CFR 103.2\(b\)\(6\)](#) ?
- the employer/petitioner of an approved I-140 goes out of business after the petition was approved?



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The employer/petitioner of an approved I-140 later withdraws the petition under [8 CFR 103.2\(b\)\(6\)](#) ?

the employer/petitioner of an approved I-140 goes out of business after the petition was approved?

- Invalidations of the labor certification in support of the petition
- Death of petitioner or beneficiary
- Written notice of withdrawal
- Termination of petitioning employer's business less than 180 days after petition approval.

I-140 Revocation	
<180 Days	>180 Days
<ul style="list-style-type: none"><li>• The petition is considered revoked, <b>unless</b> an associated adjustment of status application has been pending for 180 days or more.</li></ul>	<ul style="list-style-type: none"><li>• The petition remains approved, and the beneficiary also retains the priority date associated with that petition.</li></ul>
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## I-140 revocation

Approved I-140 petitions are no longer automatically revoked when an employer withdraws the petition or the business terminates... But only if the withdrawal or termination occurs 180 days or more after the petition was approved, or after an I-485 adjustment of status application has been pending for 180 days or more

There is a difference between retaining a priority date and retaining the validity of an I-140 petition approval. The rule clarifies how a priority date is retained and how this differs from the provision that addresses what constitutes I-140 revocation for purposes of I-140 portability cases.

Changes effective January 17, 2017 provide time-based criteria for determining when a petition is considered automatically revoked under such circumstances. The following timelines determine the effect of an employer's withdrawal of an approved employment-based preference petition, or of the termination of the petitioning employer's business.

**Less than 180 days.** If the withdrawal or business termination occurs *less than 180 days after petition approval*:

The petition is considered revoked, **unless** an associated adjustment of status application has been pending for 180 days or more.

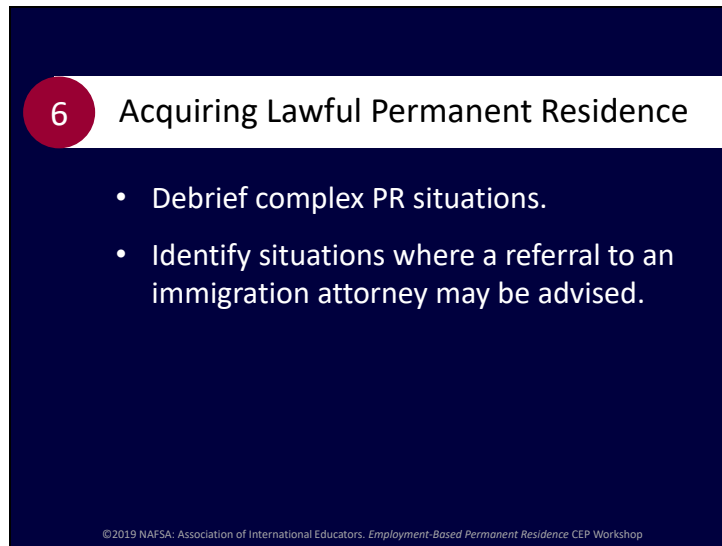
However, the beneficiary may still retain the priority date associated with the petition revoked on this basis (see 13.A.2.1.1 Priority date retention in EB cases).

**180 days or more.** If the withdrawal or business termination occurs *180 days or more after petition approval* or *180 days or more after an associated adjustment of status application has been filed*:

The petition remains approved, and the beneficiary also retains the priority date associated with that petition.

However, since the petition withdrawal or the termination of the business means that the underlying job offer is rescinded, the alien must obtain a new EB petition in order to seek adjustment of status or an immigrant visa as an employment-based immigrant,

*unless* he or she is eligible under the INA 204(j) ; 8 USC 1154(j) portability provisions for adjustment of status or an immigrant visa (See 13.D.1.5 Portability of I-140 petitions and Labor Certification applications for more information).

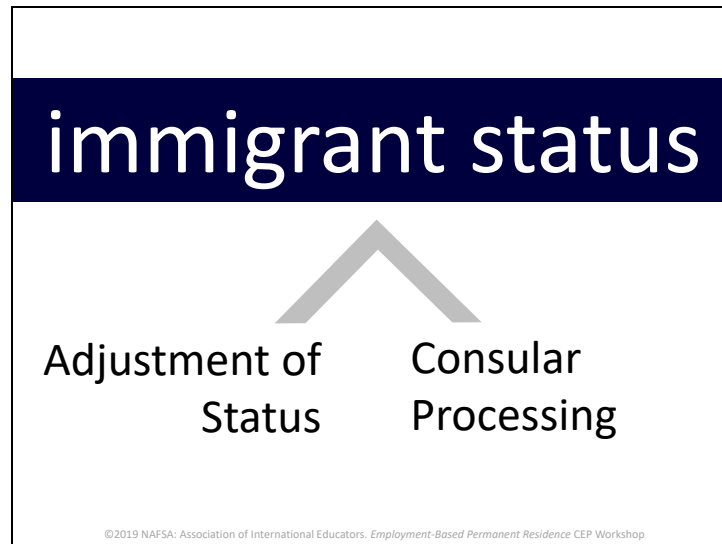
A presentation slide with a dark blue background. At the top, there is a white horizontal bar. On the left side of this bar is a red circle containing the number '6'. To the right of the circle, the text 'Acquiring Lawful Permanent Residence' is written in a dark blue font. Below this bar, there is a bulleted list with two items. At the bottom of the slide, there is a small line of text in a light blue font.

6 Acquiring Lawful Permanent Residence

- Debrief complex PR situations.
- Identify situations where a referral to an immigration attorney may be advised.

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Last, and possibly most important: Section 6 – Acquiring Lawful Permanent Residence



Adjustment of status applications are processed by DHS in the U.S. through an I-485 application filed with the USCIS

Consular processing occurs at a U.S. Consulate/Embassy abroad having jurisdiction over the alien's place of residence or place of birth

## Department of State Resources



U.S. Department of State

↓

consular processing

- DOS cables
- Foreign Affairs Manual (FAM)
- Visa bulletin
- Immigrant Visa Applications for Consular Processing
- Information specific to Embassy/Consulate

[travel.state.gov/content/visas/en/law-and-policy/bulletin.html](https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html)

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As a reminder here is a summary of the Department of State resources that will inform the final stages of Perm.

### **DOS cables**

The DOS "rapid-delivery" vehicle for getting interpretive guidance to its field offices is the "cable." DOS cables are prepared by DOS headquarters staff, and sent to consular offices worldwide, after the content of the policy guidance has been approved at the necessary levels within DOS.

DOS posts a few of its field cables on its website

### **Practice Note**

Reading the transmittal information on DOS cables

The transmittal information at the top of DOS cables tells you when the cable was issued. The transmittal language in the following example tells you that the cable was issued on August 1, 2002.

### **Foreign Affairs Manual (FAM)**


The Department of State codifies policy and interpretive guidance into a practice manual for Foreign Service Officers called the Foreign Affairs Manual (FAM). The FAM sections state the law, discuss DOS interpretation of the law, present procedural guidance, and display links to reference material. Chapter 9 of the FAM deals with visa issuance. Although most of 9 FAM is accessible to the public, internal guidance deemed by DOS to be sensitive in nature is not available to the public.

Slide 154



Remember the visa bulletin from the last section? This will need to be referenced when you are ready to file.



<p><b>Adjustment of Status</b></p>  <p>Tenured (-Track) Professor</p>	<ul style="list-style-type: none"><li>• Priority Date must be current</li><li>• Employee must be maintaining nonimmigrant status and not have worked without authorization<ul style="list-style-type: none"><li>• INA 245(k) forgives failure to maintain nonimmigrant status or unauthorized employment up to 180 days, but must be in valid nonimmigrant status at time adjustment application filed – Applicant should consult legal counsel</li></ul></li><li>• Employee must be admissible – discussed on next slide</li></ul>
--	---

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### Eligibility for adjustment of status

The basic rules on who is eligible for adjustment appear at INA §245. They are complex. This lesson will deal with only the following basic issues:

**Current status.** Adjustment of status based on employment requires that the alien has maintained status at all times since admission. The alien must hold a currently valid nonimmigrant status such as F-1, J-2, H-1B, O-3, etc. at the time of filing the I-485. Certain students and scholars may be considered to have maintained status if they were in violation, but were formally reinstated to status. The reinstatement may serve to cure the status violation.

**No unauthorized employment.** Adjustment requires that the alien has not engaged in unauthorized employment at any time.

#### 245(k) exception

INA 245(k) enables a person who, at the time of he or she applies for adjustment of status, is present in the United States pursuant to a lawful admission, so long as subsequent to that admission he or she has not failed to maintain status or worked without authorization for more than 180 days in the aggregate. Advisers should refer employees with questions about whether they can benefit from 245(k) to a qualified immigration lawyer.

**Preference categories and priority dates.** A visa number must be available to the alien at the time of filing the I-485 (see workbook Unit 2).

**Inadmissibility.** The alien must not be inadmissible under any of the grounds listed in INA 212 (see Section 7.6 in the participant workbook).

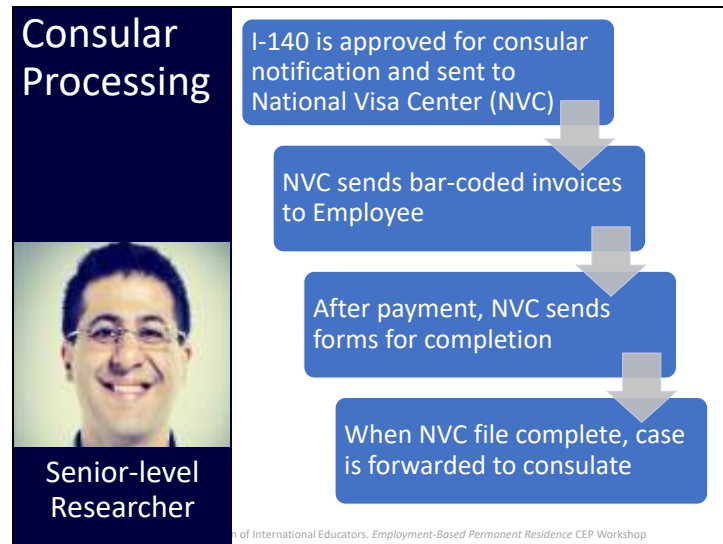
## Adviser's Role in Adjustment of Status

A variety of issues affecting AOS eligibility, or at least complicating AOS, may arise, and employee may be reluctant to divulge information to you

- Employee must be maintaining nonimmigrant status and must not have worked without authorization in order to be eligible for AOS (INA 245(k) forgives some violations of less than 180 days)
- Grounds of inadmissibility to U.S. and AOS ineligibility
- Waiver may be available but should be considered before filing AOS

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Adviser files LC and I-140 as agent of employer, but I-485 is the employee's personal process and responsibility.



### Immigrant visa vs. LPR status

An immigrant visa issued by a consular post is only that - a visa. It is not LPR status. In the same way that students may get an F-1 visa, but only have F-1 status when they enter the U.S., so obtaining an immigrant visa only permits the alien to apply for admission to the U.S. at a port of entry. The immigrant visa consists, in part, of a sealed packet that the alien must carry with him/her to the port of entry and give to the DHS officer there. The DHS officer will review that documentation, admit the alien in LPR status, and submit appropriate documents to DHS for issuance of an LPR card (Form I-551) to be sent to the alien. Upon entering the U.S. the alien has LPR status.

### Processing times

Consular processing can take as little as a few to six months from the date the consular post receives confirmation of approval of the I-140, although it could take longer.

Form I-140, Part 4 Processing Preferences

Part 4: Processing Preferences (continued)

1. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

2. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

3. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

4. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

5. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

6. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

7. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

8. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

9. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

10. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

Part 5: Additional Information - Read the Instructions

11. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

12. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

13. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

14. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

15. Is your current address in the United States? (If yes, provide the address in the space provided below. If no, provide the address in the space provided below.)

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It is important to put a good, reliable address for the alien on the I-140 in Parts 3 and 4 or on the I-824 if you file one. Bad addresses mean the alien or his or her agent does not get important correspondence for consular processing.

### Concurrent filing of I-140 and I-485

Concurrent filing of an EB-1, EB-2, or EB-3 I-140 petition and an I-485 adjustment of status application is possible, as long as the beneficiary-applicant's priority date is current at the time of filing. I-485 applications filed by spouses and minor children (under 21) who qualify for derivative status are also permitted.

#### authority cite


#### **8 CFR 245.2(a)(2)(i)(B)**

Since an adjustment of status application is being filed, the alien can also apply for employment authorization using Form I-765, Application for Employment Authorization, and for advance parole travel authorization using Form I-131, Application for Travel Document.


The decision to concurrently file does not have to be made at the time the I-140 is filed.

Although simultaneous filing is possible, it is also possible to file an I-485 after the I-140 is submitted, by including the I-140 receipt notice in the I-485 packet. Note: concurrent filing is not available to those whose priority date has not yet been reached


*When should these documents be included?*



**Form I-485**  
Application to Register  
Permanent Residence  
or Adjust Status




**Form I-131**  
Application for Travel  
Document



**Form I-765**  
Application for  
Employment  
Authorization

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*Can we...* submit simultaneous  
adjustment of status  
and consular  
processing filings?



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DHS and DOS regulations and procedures do not permit simultaneous adjustment and consular processing filings. The alien must pick one and abandon the other. If the alien files for consular processing and then files for adjustment, DOS will terminate the consular processing. If the alien files for adjustment and then files for consular processing, USCIS will terminate the adjustment.

Many attorneys recommend requesting consular processing on the I-140 and changing to adjustment later if that route seems best. The choice on the I-140 must be made months in advance of the approval of the I-140 and of the processing for LPR status. If the alien chooses DOS consular processing on the I-140, he/she may switch to adjustment simply by filing the adjustment application, Form I-485, with USCIS. If the alien chooses adjustment and then decides to change to DOS consular processing he/she generally must file a Form I-824 with USCIS to have the file moved to the DOS National Visa Center (NVC) and then transferred to the appropriate consular post. That process can take a year or more.



*What if...* the lawful permanent resident applicant decides to work elsewhere after your institution has undergone the labor certification and petition process?

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Portability means that even though the employer has done all of the extensive and resource intensive labor certification and petition paperwork to allow the alien to obtain LPR status, the alien has no obligation to work for the employer after the 180 days have passed.

The alien may simply move to another similar job. This portability provision may raise concerns for those campuses or labs that are depending on the alien for a particular class or project or that may have offered the LPR assistance as an incentive for recruitment or retention.

## Portability

The law confers the benefit of the approved petition upon the **alien**, regardless of whether the alien remains with or returns to the employer that filed the petition.

- I-485 must be pending for 180 days or more
- I-140 need not be approved to request portability
- Job must be in same or similar occupation

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The law permits an alien to “port” or transfer employment to an employer other than the one that filed the employment-based petition, if the alien has filed for adjustment but USCIS has failed to act on the application within 180 days of filing. The law confers the benefit of the approved petition upon the alien, regardless of whether the alien remains with or returns to the employer that filed the petition.





Encourage tables to share best approaches to sharing realities and expectations about priority dates and the preference system.

*What if...* the beneficiary informs  
us of a potential  
conflict that may  
render them (or a  
family member)  
inadmissible?



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Discuss this with the group before turning to the next slide

### Grounds for Inadmissibility


Grounds of inadmissibility include:

- Certain communicable diseases, dangerous physical/mental disorders
- Conviction/admission of certain crimes (including crimes involving moral turpitude)
- Controlled substance violation, trafficking
- Nazi, totalitarian, torturer, polygamist, terrorist activity/support
- Likely to become a public charge

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Grounds of inadmissibility include:

- Certain communicable diseases, dangerous physical/mental disorders
- Conviction/admission of certain crimes (including crimes involving moral turpitude)
- Controlled substance violation, trafficking
- Nazi, totalitarian, torturer, polygamist, terrorist activity/support
- Likely to become a public charge



### In Practice: Advising Permanent Resident Issues

<p>Select one of the complex issues addressed in the workbook. In your groups, discuss:</p> <ul style="list-style-type: none"> <li>What profile factors are important to the case?</li> <li>Why is the problem a problem? Where should you look to find a resolution?</li> <li>How does the advising help seek to resolve the issue?</li> <li>What are the implications for similar cases in the future?</li> </ul>	<div style="border-bottom: 1px solid black; padding-bottom: 5px;"> <p>Grouping: Small Groups</p> </div> <div style="border-bottom: 1px solid black; padding: 5px 0 5px 5px;"> <p>Timing: 15 minutes</p> </div> <div style="padding: 5px 0 5px 5px;"> <p>Materials: Workbook page 106</p> </div>
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There are a variety of complex issues that can cloud an otherwise promising petition for PR. Tell participants that you are inviting them to dig into a more complex scenario. The answers are all on the page, but they should discuss the questions as it relates to each case.

Have participants choose the scenario the topic they are most interested in discussing. Encourage groups between 3-6. Circulate among participants and sit in on discussions, providing insights as needed.

- Family relationships
- Criminal history
- PR already in process
- Marriage
- Medical inadmissibility



Despite the best intentions and plans, surprises can come up unexpectedly.

[Distribute these statements on slips of paper. (Not everyone will get one.) Have participants share how these statements might cause problems with obtaining LPR.]

**Family matters:**

You have moved since your I-140 was filed? Did you notify USCIS of your change of address on Form AR-11? Did you notify the USCIS Customer Service line?

How many kids do you have all together?

When is the wedding?

When does that divorce become final?

**Hidden problems:**

Tell me again when you had a Fulbright?

What? Your new wife just told you yesterday that she had a Fulbright 5 years ago? Yieeeee!

What's this I-94? It has an expiry date of 1/2/2008. It says B-2 on it. Was this your last entry?

**Personal problems:**

Specifically, what was the conviction for?

I'm so sorry about the diagnosis. Active TB, huh?

**Money problems/unauthorized employment problems:**

Tango? You've been teaching tango for the local dance studio all along? But you're a philosophy professor.

So, can I please see your paycheck? It comes from where? When did that change? Your boss owns the little biotech spin-off? And he said it didn't matter where your paycheck comes from? It's all the same pot of money? Yieeeee.

So, what has happened to the funding on your grant?



LPR status permits one to live and work in the United States and to function in most respects in the same way as a U.S. citizen, but LPR status is not the same as U.S. citizenship. Most countries allow an individual to have U.S. LPR status and still maintain citizenship in the home country. In such a case, the individual travels with the U.S. permanent resident card and the passport issued by his or her country of citizenship.

LPRs can buy and sell property, operate business, and are entitled to most constitutional protections. There are certain rights reserved for citizens:

- LPRs cannot vote,
- Cannot serve on juries, and
- Cannot hold certain elected public offices or jobs reserved for citizens for security and related reasons.

#### **Abandonment of adjustment application by non-approved travel abroad**

If an alien has filed an I-485 and leaves the United States without first obtaining Advance Parole, then the departure constitutes an abandonment of the adjustment application. As noted above, there is an exception to this rule for those in H-1B status.

#### **Difference between being an applicant for LPR status and actually having LPR status**

It may take two years or more for the adjustment application to be approved and LPR status granted. During that waiting time the alien is only an applicant, nothing more. He/she does not have the rights that connect to LPR status and he/she is not accruing time toward citizenship. Once the I-485 is filed and an I-765 and I-131 are filed and approved, the alien has documents that let him/her behave almost as if he/she had LPR status. With an approved EAD and Advance Parole, the alien has permission and documentation to engage in generally unrestricted

employment and to travel outside and reenter the United States without obtaining a visa. However, these options require vigilance and maintenance. Similarly, he/she should be reminded that he/she cannot claim to have LPR status until that status is actually granted.

**Campus Caveat**


The alien must be reminded not to fall into a false sense of security and allow work permission to lapse. Such a lapse could render the alien unemployable and hinder or harm the employer's ongoing teaching or research activities. The international office should consider creating a “tickler system” to remind employees to renew work permission



Maintaining LPR	
Lawful Permanent Residence	<ul style="list-style-type: none"><li>• Permanent resident card is issued for a period of 10 years, after which it must be renewed</li><li>• Must report address changes to USCIS</li><li>• Maintain the intent to permanently reside within the U.S.</li><li>• Note: Even a U.S. LPR can be deported</li></ul>

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Permanent resident card is issued for a period of 10 years, after which it must be renewed  
Must report address changes to USCIS  
Maintain the intent to permanently reside within the U.S.  
Note: Even a U.S. LPR can be deported



### In Practice: Advising New Lawful Permanent Residents

<p>Review your assigned topic.</p> <ul style="list-style-type: none"><li>• How would you advise your new LPR?</li><li>• Be prepared to share with the larger group</li></ul>	Grouping: Groups of 2-3
	Timing: 10 minutes
	Materials: Workbook page 120

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**Note to Trainer:**

Assign Workbook topics to groups and de-brief with the entire class at the end of 10 minutes.



Discuss which cases were those that would be referred to an attorney.


**Note:**

Anyone who believes he/she may be inadmissible should seek qualified legal counsel. Educational institutions and their staff take a tremendous risk and responsibility in attempting to advise anyone in regard to inadmissibility. The best advice is usually, “talk with a good immigration lawyer.”

Recall institutional policy factors discussed in the first chapter. Knowing what the capacity and limitations of your institution will save the applicant and staff the hardship of petitioning without a successful end. An attorney is often most equipped to handle those more challenging issues.

Workshop Agenda	
1	Pathways to Permanent Residence
2	Employment-Based Permanent Residence
3	Alien Labor Certification
4	Non-Labor Certification Options
5	Filing the I-140 EB Immigrant Petition
6	Acquiring Lawful Permanent Residence

That brings us to the end of our workshop. By now you should be able to:



### In Practice: From Workshop to Work

Review the content of the workshop and determine what you would like to prioritize when you return to your office.	Grouping: Individual
	Timing: 15 minutes
	Materials: Workbook page 5

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The key is to not only engage in the workshop, but consider how you will apply this content when you return to your office.

Have participants share their priorities.

# Participant Workbook Starts Here

# Employment-Based Permanent Residence

<b>Introduction .....</b>	<b>4</b>
<b>Pathways to Permanent Residence .....</b>	<b>6</b>
Pathways to Permanent Residence.....	6
Sources of Authority for Permanent Residence.....	9
Institutional Policy Implications for Sponsorship.....	12
<b>Employment-Based Permanent Residence.....</b>	<b>19</b>
Numerical Limits .....	19
Employment-Based Positions at Colleges and Universities .....	22
<b>Alien Labor Certification.....</b>	<b>25</b>
Labor Certification .....	26
Job Opportunity .....	28
Qualifications.....	35
Wage Requirements.....	39
Notice and Recruitment .....	45
<b>Non-Labor Certification Options.....</b>	<b>56</b>
USCIS Adjudication.....	56
Labor Certification Exemptions .....	59
<b>Filing the I-140 Employment-Based Immigration Petition.....</b>	<b>76</b>
Completing the Form I-140.....	77
Priority Dates .....	85
Approval, Denial, or Revocation .....	94
<b>Acquiring Lawful Permanent Residence .....</b>	<b>97</b>
Filing the Form I-140.....	77
Institutional Strategy .....	102
Institutional Policy and Attorney Referrals .....	119
<b>References.....</b>	<b>123</b>

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**Dawn Cepica**, Texas Tech University

2019 CEP Workshop Dean: **Michael Freeman**, University of Arkansas-Fayetteville

NAFSA's Professional Learning Services (PLS) develops, maintains, and delivers quality in-person and virtual training and programs for professionals in international education at all levels of their careers. PLS collaborates with volunteers to develop and deliver curriculum and programs, works closely with NAFSA staff to identify current trends and opportunities, and incorporates appropriate training technology, theory and practice. Through these learning opportunities, The PLS team strives to improve the experience of IE professionals and the constituents they serve—faculty, students, scholars and their institutions—by building a network of IE professionals who are actively engaged in achieving the NAFSA mission.

Contact NAFSA's Professional Learning Services to help you find the professional development opportunities that are right for you at any stage of your career! ([professionallearning@nafsa.org](mailto:professionallearning@nafsa.org))



## Extend Your Learning at NAFSA

The NAFSA Core Education Program provides ongoing learning and training. As a value add for all CEP Workshop participants, workshop-related resources, table references, and continued learning opportunities are found online at [www.nafsa.org/wr-ebpr](http://www.nafsa.org/wr-ebpr).

## About the NAFSA Core Education Program

The NAFSA Core Education Program (CEP) prepares new and experienced professionals to take on more responsibilities with confidence. CEP Workshops and e-Learning Courses build the foundation of skills and expertise needed to advance the profession of international education in the United States.

CEP curricula and training materials are a product of collaborative creation and are peer-led by practitioners working in the field. Each workshop and course highlights model practices and provides intentional opportunity for building connections and growing networks.

The Core Education Program strategically connects to the NAFSA International Education Professional Competencies. Certificates of Participation are provided to those who complete CEP Workshops and e-Learning Courses.

## About the NAFSA International Education Professional Competencies

The NAFSA International Education Professional Competencies™ is the most comprehensive listing of the necessary competencies for success in the field of international education. From adviser to manager to policy maker, the International Education Professional Competencies offer everyone working in international education a direction for professional success. Learn more at [www.nafsa.org/competencies](http://www.nafsa.org/competencies).

Created by a group of NAFSA member leaders and reviewed by numerous international education experts, the NAFSA International Education Professional Competencies™ forms the basic building blocks of the international education profession. IE professionals can use the proficiencies and the NAFSA Career Print to assess and shape professional goals that align with NAFSA's portfolio of professional learning resources, training, and publications. To develop your own Career Print assessment, go to [www.nafsa.org/careerprint](http://www.nafsa.org/careerprint).



# Introduction

---



## **In Practice: Who's at your table?**

Introduce yourselves to your tablemates. Share:

- Your name and institution.
- What is your prior experience with lawful permanent residence?
- What is your primary expectation?

### **Grouping:**

Table

Who is at your table?

Workshop Trainers

## Workshop Objectives

Following this workshop you will be able to:

- Describe the regulatory underpinnings of lawful permanent residence
  - Follow a step-by-step process for evaluating employment-based sponsorship
  - Recognize issues affecting the employment-based permanent residence process
  - Initiate institutional policies for permanent residence sponsorship
- 

## Workshop Agenda

- 1 Pathways to Permanent Residence
- 2 Employment-Based Permanent Residence
- 3 Alien Labor Certification
- 4 Non-Labor Certification Options
- 5 Filing the I-140 EB Immigrant Petition
- 6 Acquiring Lawful Permanent Residence

## From Workshop to Work

What do you want to remember and follow up on when you return to your workplace?

Pathways to Permanent Residence	
Employment-Based Permanent Residence	
Alien Labor Certification	
Non-Labor Certification Options	
Filing the I-140 EB Immigrant Petition	
Acquiring Lawful Permanent Residence	

# Pathways to Permanent Residence

## Objectives:

- ❑ Identify different pathways to acquiring Permanent Residence (PR)
- ❑ Search statutes and regulations pertaining to PR
- ❑ Discuss institutional policy implications for sponsorship

## Pathways to Permanent Residence

A person can become a lawful permanent resident (LPR) of the United States in a variety of ways. The important message to the individual scholar is that all green cards are the same in the long run and that the institution seeks the shortest and most efficient path to that green card. We can group the pathways to permanent residence into three principal categories.

### Family-Based Preferences



The U.S. government provides for immigration based on family relationships. For instance, the scholar is going to marry an American citizen in the near future, the institution may avoid the laborious process of filing an employment-based immigrant petition. There are four family-sponsored preferences:

<b>First Preference</b>	Unmarried sons and daughters of citizens
<b>Second Preference</b>	Spouses and children, and unmarried sons and daughters (under the age of 21) of permanent residents
<b>Third Preference</b>	Married sons and daughters of citizens
<b>Fourth Preference</b>	Brothers and sisters of adult citizens

### Employment-Based Preferences



Every year, the U.S. provides visas to 140,000 immigrants for employment-based reasons. Immigrants are afforded employment-based visas based on their work experience and their ability to work. They are granted preference in 5 categories, which will be described in greater detail in the next section.

<b>First Preference (EB-1)</b>	Aliens with extraordinary ability Outstanding professors and researchers Certain multinational executives and managers
<b>Second Preference (EB-2)</b>	Members of the professions holding advanced degrees Aliens of exceptional ability in the sciences, art, or business
<b>Third Preference (EB-3)</b>	Professionals and skilled workers (requiring 2 or more years of specific education, training, or experience) Other (unskilled) workers
<b>Fourth Preference (EB-4)</b>	Certain special immigrants (e.g., Afghan or Iraqi translators)
<b>Fifth Preference (EB-5)</b>	Employment creation, for immigrants who invest in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time jobs for U.S. workers

## Public Policy and Humanitarian Reasons



The U.S. makes a provision for a variety of other types of immigration, that may change based on political conditions. International advisers must stay abreast of potential changes based on economic or political conditions that impact regulations and policy.

Diversity Lottery	The Diversity Lottery was established in the 1990s to respond to a call to increase immigration from countries that were under-represented in the immigrant pool.
Refugee and Asylees	Refugees and asylum procedures account for situations where an individual must flee general or individual conditions of their home country.

For professionals working at educational institutes, we do not advocate advising in the realm of either family-based immigration or public policy/humanitarian immigration, since the institution does not play an official role in those processes. It is always important to remember that the international adviser represents the interests of the institution. Certainly, the individual needs to be protected, but the adviser does not represent the individual in the way that an attorney represents an individual.

### In Practice: Advising the Right Pathways

Read your assigned scenario. Consider which path to permanent residence would be the best option in each case.

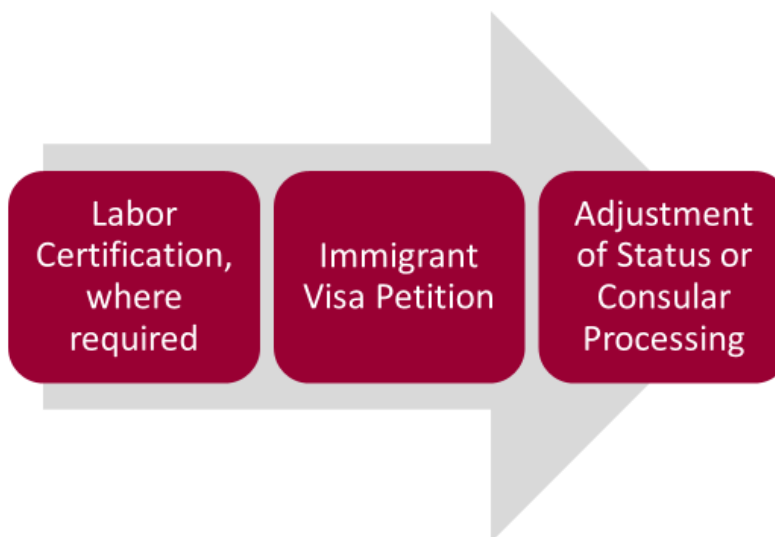
**Grouping:**  
Pairs

Case Study	Which Pathway? Why?
1. As a former political activist and lecturer, Dr. Pamuk from Istanbul is currently a J-1 lecturer at your institution. He has been vocal in his criticism of the current government in Turkey. There is now a warrant for his arrest, and Dr. Pamuk is looking for options that would allow him to stay in the U.S.	
2. Dr. Kim came to your institution five years ago in H-1B status in a researcher (PhD/non-postdoc) position. Recently he and his faculty supervisor have been discussing longer-term plans. The department has advertised for the new position in the local newspapers. Dr. Kim has a significant publication record and has served extensively as a peer reviewer in a number of important journals.	

- |   |  |
|---|--|
| 3. Dr. Albert Sauer is a relatively new PhD who is working on cutting-edge biomedical research. He has been instrumental in the development of a new drug for treating pertussis in small children. He is anxious to get his green card since, in his field, it is not possible to be a Principal Investigator for a research grant unless one is a permanent resident. He has mentioned that he is engaged to a U.S. citizen and plans to be married in the coming year. |  |
| 4. Dr. Kimara Watanabe is a new PhD who has just come to your Department of Economics in J-1 status. She is very ambitious and is ready to get started on her application for permanent residency. She is proud of her three publications and is looking forward to a career at your institution since she loves the area and is already happily coaching soccer for her daughter's grade school team.  |  |

## Employment-Based Permanent Residence Process

It is a bit misleading to claim that there are three stages to permanent residence because each stage is involved with layers of actions required on the part of the petitioner. However, it does help to consider that there are three stages that are more like milestones, each working closely with the regulations and guidance of a different government agency. The labor certification process is largely guided by the Department of Labor. The Immigrant Visa Petition is completed in alignment with USCIS at the Department of Homeland Security. The final stage splits, but this is where the U.S. Department of State guides the process.



## Sources of Authority for Permanent Residence

The specific laws concerning lawful permanent residence reflect how the United States makes choices about who can live and work permanently in this country.

### Law and Interpretations

Government authority in the U.S. legal system can be divided into two main categories: law and interpretation of law. Law and interpretations of law are the underlying basis for government policies, procedures, and adjudications.

An in-depth familiarity with the laws and interpretations having to do with lawful permanent residency is essential to advising in that area.

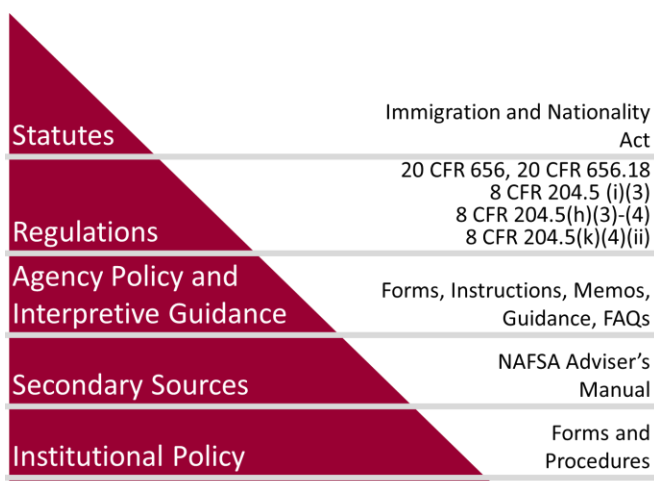
### Interpretation and law are linked, but do not have equal weight: law weighs more!

Law and interpretation do not have equal weight. That is to say, law has more authority than interpretation, and interpretation is always bound by the confines of the language of the law. The two are, however, inexorably linked.

Interpretation of the law is also different than application of the law. Basically, laws are interpreted and then applied to a unique, specific set of facts. Adjudication occurs when the government applies the law and interpretation to make a decision about a request for a benefit provided for in the law.

### Authority Hierarchy

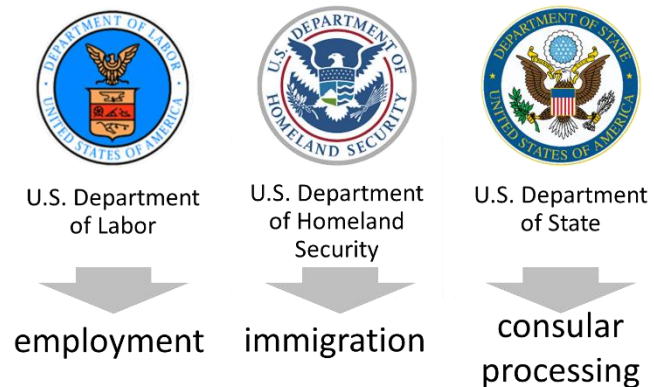
There is a hierarchy in the relative authority that laws and interpretation have. The Constitution is the supreme law of the land and is at the top of the hierarchy. No law or interpretation of law can contravene the Constitution. Statutes passed by Congress, presidential executive orders, and precedent decisions of the U.S. Supreme Court have the next most important place in the hierarchy of authority. Laws passed by federal agencies, commonly known as regulations, are the next most important kind of law. Precedent decisions made by administrative appellate bodies have an equal place with regulations, since the administrative agencies are bound to follow the precedent decisions of the appellate bodies above them.





## Key Sources of Written Government Interpretive Guidance

DHS, DOS, and DOL officers adjudicate matters before them by interpreting laws and then applying the interpreted law to a specific set of facts. Because the wording of both statutes and regulations is often ambiguous, the agencies have instituted standardized mechanisms for guiding officers in the field on how the law should be interpreted. Because procedures are often not discussed in great detail in the law, internal guidance is also provided on proper procedures. There are two levels of standardized written guidance:



1. Cables, memos, and other rapid-delivery communication vehicles
2. Codified internal interpretations that preserve internal guidance of standing value in “manual-like” form

## NAFSA Adviser’s Manual

NAFSA Adviser's Manual 360 (AM360) is *the* comprehensive source on U.S. immigration policy and procedures impacting educational institutions in the United States and providing information critical to every international student and scholar services office. In addition, access to the Adviser’s Manual News Feed Portal is provided courtesy of the AM360, delivering news and updates relevant to higher education immigration advisers.

The screenshot shows the NAFSA Adviser's Manual 360 website. The header includes the title 'NAFSA Adviser's Manual 360' and navigation links: 'My Dashboard', 'NAFSA Home', 'Network NAFSA', 'News/Updates', and 'Bookmarks/History'. Below the header is a search bar labeled 'Search The Manual' and a dropdown menu for 'All Chapters'. The main content area is divided into a left sidebar and a right pane. The sidebar lists the 'Overview of Employment-Based Preferences' and a list of chapters, with '13.A.1 Procedural comparisons in the EB preference system' selected. The right pane displays the content for '13.A.1 Procedural comparisons in the EB preference system', including a list of categories exempt from the alien labor certification requirement and a list of categories exempt from the alien labor certification requirement. The content is organized into a list of categories, with '13.A.1.1 Categories exempt from the alien labor certification requirement' selected. The content area also includes a list of categories exempt from the alien labor certification requirement, with '13.A.1.1 Categories exempt from the alien labor certification requirement' selected.





### In Practice: Search the Sources

Review the sources of authority to respond to each question.

- Where can the answer be found?
- Who is the regulating agency?

#### Grouping:

Groups of 2-3

1. A department sponsor believes their candidate qualifies for the Outstanding Professor category, where can you look to learn more about the qualifications?	
2. Your Human Resources Director has shared the job description for a computer science faculty position. What resource should you check next to see if it meets standard expectations.	
3. You would like to explain to a coworker the criteria by which USCIS weighs an I-140 application. What resource can you reference to share that criteria?	
4. There is some discrepancy about who should sign the form ETA 9089, where can you find that information?	
5. You have been tasked with getting the prevailing wage determination, which you have never done before. Where do you go for help?	
6. An applicant asks whether you advise them to pursue consular processing or adjustment of status. Where can you find advising language to help frame the decision for the applicant?	
7. You are ready to file the petition!! Where can you find out whether there are still spaces in this year for the preference level and category?	

## Institutional Policy Implications for Sponsorship

The decisions that go into the formation of good institutional policy should be taken in a systematic and rational way, with attention paid to all the stakeholders. There are many factors that influence the formation of a coherent policy for processing employment-based petitions at a college or university. As with any administrative function, the formation of a written policy can serve to prevent some problems and to mitigate others. While you cannot plan for every contingency, some advance planning can avert disasters.

- What is the demand for services?
- Who is the client?
- Who is the sponsor?
- Who is the service provider?

## Adviser's Role in the PR Process



To what extent does the adviser participate in the permanent residence application process?

### Demand for Services

Different kinds of institutions have different needs for scholar services. For example, institutions with excellent research facilities and reputations are likely to be magnets for international scholars. Demand should drive the policy and decisions related to developing a PR policy.

- ☐ A college or university that concentrates on teaching rather than research may have fewer H/PR applications.
- ☐ A Research I institution may have heavy demand. Traditionally, there is significant international cooperation in universities that concentrate in agricultural research.
- ☐ A medical research facility will almost certainly have more need for scholar services than a four-year undergraduate college.
- ☐ Institutions that host a large number of short-term international visitors will want to staff differently from institutions which seek long-term international faculty.

## The Client

How an institution defines the client will depend how policy is developed. Consider the following potential clients.

- **Department:** In an academic setting, the ultimate “receiver” of the services of an international scholar office is the department that wants to bring an international faculty or researcher on board.
- **International Scholar:** In another sense, the incoming international scholar is the “client.”
- **Institution:** In yet another sense, the university as a whole is the “client” since the entire university benefits from the service.

It is just this split that complicates the discussion. In general, if the institution runs a sizable J exchange visitor program, processes some Hs and some permanent residency petitions, the ratio might be somewhere in the vicinity of 300 scholars to 1 professional staff member. If, on the other hand, the institution has a small J program, processes a large number of Hs and many, many immigrant petitions, the ratio should be smaller since Hs and PR applications are much more time consuming than simple Js. (Participants who work with large J populations will smile at even the hint that any J is “simple.” Suffice it to say that there is less paperwork in a J than in an H!)

## Ongoing Staff Training

Immigration law is a form of administrative law that is awash in a sea of constant change. Competent processing demands constant training, reading, discussion, participation in professional meetings, etc. What was true in the processing of LPR applications a few years ago is not necessarily true today. It is a truism to say that a little knowledge is a dangerous thing. But this is particularly true in immigration law.

Training for professionals who process LPR applications is more complex and advanced than that for those professionals who deal with student visa issues. This is not to say that the scholars themselves are more complex than students are; but it is the case that there is more paperwork in the scholar arena. In addition, scholar advisers deal with the Department of Labor as well as the Department of Homeland Security and the Department of State.

- Does your institution have a clearly defined support-staff hierarchy, i.e., is there a long-term administrator in each department with whom scholar services can work? Or does your institution seem to have a continuous stream of administrative assistants who occupy a position for a matter of months before they move on to another job elsewhere?
- Does it make sense to provide long-term training to all the administrative staff at your institution or do you need to target support staff in departments that host a large number of

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*Are “client to staff ratios realistic?”*

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The first question administrators ask about staffing is the appropriate ratio of staff to client. This is a difficult question to resolve because it begs the question of who is the “client.”

international visitors? Would it be possible to establish on-going training for support staff in these matters through your institution's employee development office?

Training is a delicate issue because it is inexorably tied to money. The bottom line is that this training must be sustained; this is a continuing expense. While it need not be extremely expensive, it is a necessary element in the formation of responsible institutional policy.

### **Inherent Risks**

This is important for more than the international faculty or staff since the university itself is also at risk.

As an example, if the Department of Labor finds that the university has not operated in good faith in an H application, DOL can ultimately prohibit the university from filing any employment petition for a period of a year. That is an unlikely scenario and it certainly would not happen if the error was a result of ignorance, but the threat remains.

### **Placement of Scholar Services in University Hierarchy**

Consider the “environment” in which the scholar service operates. In some cases, scholar services will be housed in the same office as the international student services. In other cases, the scholar adviser may be in the human resources department or in the university counsel’s office. There are pros and cons to any placement. Development of a workable institutional policy takes this into consideration.

- **International Student and Scholar Office:** In an international student and scholar office, scholar advisers can consult with their student adviser colleagues on J matters since they have much in common. In fact, that is a solid reason for having student and scholar services housed together. Discussion of fine points of the regulations is a form of continuing education for all advisers.
- **Human Resources:** Placement in a human resources department will change the focus to include more pointed consideration of items like job title in the processing of H petitions. Placement in a human resources department may ground a scholar adviser more completely in the university's employment matrix.
- **University Counsel:** Placement in the office of university counsel may bring the scholar adviser into closer touch with legal issues outside the immigration context, e.g., tax compliance, liability concerns, etc.

### **Campus Culture**

There are a number of variations on a theme for LPR processing, but generally they fall into one of two categories: centralized vs. non-centralized. The one best suited to your campus may have a great deal to do with the prevailing “culture” on your campus.

- Do departments and research institutes on your campus have a great deal of autonomy?
- Are departments accustomed to running their operations independently of the larger structures of the university?

- Does the central administration exercise tight control of hiring processes?
- Is the human resources department a player in every hire or are they simply informed of a hire after the fact?
- Will strict controls on LPR processing work on your campus, or do you need an institutional policy that recognizes the relative autonomy of departments and/or institutes? What works in terms of H-1B filing on your campus may not work in terms of LPR processing.
- Does your institution have a very high profile with governmental entities?
- Does your institution need to be mindful of charges of collusion or anti-trust violation with nearby institutions? Or do you sit in splendid isolation as the “only game in town”?

Whatever your environment, it is important to have a written policy since it will provide needed continuity in a fluid support staff situation and a training structure in a more stable support staffing situation. We provide a rudimentary list of steps for the formation of a written policy at the end of this section.

### Outside Counsel

The use of outside counsel is a critical factor in the development of a sensible and workable institutional policy. If your institution exists in a small college town with few immigration attorneys available, it is not practical to establish an institutional policy that requires incoming international scholars to retain independent counsel for the processing of their LPR petitions. On the other hand, if your institution exists in a place with a wealth of good immigration attorneys, you may make a different choice about the use of outside counsel.

There are other factors involved in such a decision: this is a case where you definitely want to consult with your university's counsel, even if that person isn't on campus.

- **Existing Policy.** There may be university policy in place that you don't know about. It may be that the university routinely prohibits ANY outside counsel from representing the university's interests in any matter.
- **University Counsel.** It may be that your university's counsel trusts the existing immigration bar to represent the interests of the university as well as the interests of the attorney's client, i.e., the international scholar.
- **Existing Attorney.** It may be that your university has a particular immigration attorney already hired to take care of any immigration work.
- **Ad Hoc Counsel.** It may be that your university has a particular immigration attorney already hired to take care of any unusual immigration work.

If it is the case that your institution has decided/is in the process of deciding to do their LPR processing “in house,” then you need to establish a relationship between the scholar services and university counsel. Some of the answers will be found in existing relationships, some in the personalities involved, some in your “campus culture.” Consider the following:

- Will there be a formal, i.e., supervisory, relationship?
- Will you call on counsel when you have a particularly difficult case?

- Is it the case that your university counsel is much too busy with other matters and has no knowledge of immigration law and will never want to see the scholar adviser?
- Will you develop a relationship that is somewhere between these extremes?

### **Fees**

A rule effective July 16, 2007 [[72 Fed. Reg. 27904](#) (May 17, 2007)] made significant changes, including imposing a 180-day validity period on approved labor certifications, and prohibiting aliens paying any employer costs associated with the labor certification process, including aliens paying what DOL considers employers' attorney fees.

- Employer must pay for labor certification advertising fees and any related attorney fees (if applicable, fee amounts for each will vary)
- USCIS I-140 fees can be paid by the employee or the employer and can include
  - USCIS I-140 petition fee \$700
  - USCIS I-907 expedited processing fee if needed \$1410
  - Attorney processing fees if applicable
- USCIS I-485 fees to adjust to PR status can be paid by the employee or the employer and can include
  - USCIS I-485 petition fee \$1225
  - USCIS I-485 petition fee for dependents \$1225 or \$750 if under 14 years of age
  - Attorney processing fees if applicable

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Source: NAFSA Advisers Manual 360

[www.nafsa.org/findresources/Default.aspx?id=35270&\\_ga=2.127258509.1280427089.1538413836-899856200.1505323947](http://www.nafsa.org/findresources/Default.aspx?id=35270&_ga=2.127258509.1280427089.1538413836-899856200.1505323947)

**In Practice: Institutional Structure and Policy**

Review the policy document. Consider whether you have a standard response and policy for each category.

**Grouping:**

Small Groups

**Worksheet for Initiating/Clarifying Campus PR Policy**

<b>Institutional Scan</b>		
Search out current institutional policy/policies	<input type="checkbox"/> Is there already something in place? <input type="checkbox"/> Does it cover all the bases? <input type="checkbox"/> Does it pre-date the current administration? <input type="checkbox"/> Is it possible that the current administration doesn't even know that that ancient document exists?	
Collect materials from various departments	<input type="checkbox"/> Human Resources <input type="checkbox"/> Compensation Services <input type="checkbox"/> Benefits <input type="checkbox"/> I-9 Compliance Office <input type="checkbox"/> Faculty Affairs <input type="checkbox"/> Academic Affairs <input type="checkbox"/> Other <input type="checkbox"/> Annual report of the institution	
Faculty and research titles and descriptions	<input type="checkbox"/> Sample and compare titles/descriptions from various departments. Note: Practice may vary from any number of written guidelines, particularly in a highly decentralized institution. <input type="checkbox"/> Meet with appropriate administrators in above departments to discern their needs and expectations.	
Institutional counsel capacity	<input type="checkbox"/> Meet with institutional counsel to discern their needs, expectations, and relationship to your office. <input type="checkbox"/> Set expectations relating to PR and their capacity to provide ongoing counsel.	
Staff capacity and expectations	<input type="checkbox"/> Evaluate your own staff's needs, expectations, training, and willingness to take on the level of complexity involved in filing permanent residency applications. <input type="checkbox"/> Realistic (or unrealistic!) expectations from your administration <input type="checkbox"/> Realistic (or unrealistic!) expectations from your faculty <input type="checkbox"/> Current expertise of international office staff <input type="checkbox"/> Opportunities for staff training <input type="checkbox"/> Access to good immigration attorneys <input type="checkbox"/> Access to helpful colleagues	

Determine Approach		
Institutional Organization and Workflow	<input type="checkbox"/> Who are the stakeholders involved throughout the process? <input type="checkbox"/> How will departments communicate and work together? <input type="checkbox"/> What are the procedural steps? <input type="checkbox"/> What are the expectations regarding turn around? <input type="checkbox"/> Discern and/or establish I-9 completion policy for foreign hires <input type="checkbox"/> Who reviews and approves? <input type="checkbox"/> Where does the buck stop regarding key issues?	
Outside Counsel	<input type="checkbox"/> Under what circumstances will outside counsel be engaged? <input type="checkbox"/> Who will pay? <input type="checkbox"/> Who will supervise counsel? <input type="checkbox"/> Who will be consulted in matters dealing with outside counsel?	
Draft Policy/Circulate/Revise		
Permanent Resident Positions	<input type="checkbox"/> Compare policy mandates to current staffing potential <input type="checkbox"/> Which positions/job titles will your institution support? Why? <input type="checkbox"/> Which positions will not be supported? Why?	
Workflow	<input type="checkbox"/> Determine which department(s) is charged with drafting policy <input type="checkbox"/> Discern who needs to review and approve <input type="checkbox"/> What is the review protocol for stakeholder feedback	
Campus Education	<input type="checkbox"/> Circulate draft to stakeholders for comment <input type="checkbox"/> Address concerns <input type="checkbox"/> Organize and conduct faculty and front-line staff training <input type="checkbox"/> Disseminate written materials on paper	



# Employment-Based Permanent Residence

## Objectives:

- ☐ Discuss limitations affecting employment-based PR
- ☐ Describe employment-based preferences
- ☐ Identify action items for institutional policy and procedures

## Overview of Resources

Statutes/Regulations	INA 203 8CFR 204-205 22 CFR 42.12
Interpretation/Guidance	AM360 13.A 9 FAM 503 Adjudicator's Field Manual <a href="https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html#0-0-0-417">https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html#0-0-0-417</a>
Forms/Instructions	Visa Bulletin
Websites	<a href="http://www.uscis.gov/greencard">www.uscis.gov/greencard</a>

## Numerical Limits

There are some immigrant categories where there are no numerical limits to the number of permanent resident visas that are offered, these include immediate relatives of U.S. Citizens, which include spouses, widow(er)s, and unmarried children.

No Numerical Limits	Numerical Limits
Immediate relatives of U.S. citizens (spouses, widow(er)s, unmarried children)	Family-sponsored <b>Employment-based</b> Diversity-lottery Refugee or asylees

There are also several categories where there are strict numerical limits. The Department of State (DOS) keeps running track of how many immigrant visa numbers are used in each preference category and by each country. Each month DOS makes a statistical calculation to estimate how many immigrant visas could be issued for the rest of the year in each of the categories, and, based on that calculation, specifies a “cut-off date” to determine who is eligible to apply for an immigrant visa number that month.

## Per Country Numerical Limits



### *25,620 visas per country*

The country to which an immigrant entering under the preference system is accredited is known as the country of "chargeability." Chargeability is usually determined by country of birth. There are some exceptions to this general rule. For example, the "derivative chargeability" exception is designed to prevent the separation of family members, and allows a spouse or child to be charged to the chargeability area of the principal provided a visa would not be immediately available if the spouse or child were charged to his or her own country of birth, and the spouse or child is accompanying or following-to-join the principal.

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22 CFR 42.12 and 9 FAM 503.2

Within the preference system, there is also an annual limit on the number of immigrant visas allowed to any given country.

**Each country can receive no more than 25,620 immigrant visas annually, i.e., 7% of the total**

Section 202 of the INA prescribes that the per-country limit for preference immigrants is 7% of the total annual family-sponsored and employment-based preference limits. That calculation works out to 25,620.

If there are high levels of immigration from a particular country, the per-country limit will kick in during the "visa year." For those countries, long waiting lines can develop. Most countries don't use their full per-country limit of 25,620 and are limited only by the numbers available to the preference category. In the recent past, only the People's Republic of China, the Philippines, India, and Mexico have been affected (to various degrees) by the per-country numerical limit, because of the volume of immigration from those countries.

### **Derivative Status for Family Members**

Certain close family members of the principal may be entitled to "derivative" status through the principal immigrant and apply for permanent residence solely on the basis of that close relationship. The relationship that forms the basis of the derivative benefit must have existed before the principal actually becomes a lawful permanent resident.

Derivative benefits in the preference categories are generally available only to the spouse and minor (unmarried and under 21) children of the principal.

It is always important to ask the prospective principal about family members, so that they can be properly incorporated into the process at the appropriate times.

## Employment-Based Numerical Limits



**140,000 visas per year**

There is frequently more demand for employment-based immigrant visa slots than there is availability. A preference category can become *oversubscribed* in two ways: either the total category availability has been reached, or the per-country limit for that category has been reached.

When a category becomes oversubscribed either in its entirety or for a particular country, a waiting list develops. A person's place on the waiting list is determined by his or her "priority date," which is the date that a labor certification application was first filed on his or her behalf with the Department of Labor, or, for those categories exempt from the labor certification requirement, the date on which a preference petition was filed on his or her behalf with USCIS.

The INA currently limits the total number of employment-based immigrants to 140,000 per year. The 140,000 slots are divided between five employment-based preference categories, as shown below, taken from the NAFSA Adviser's Manual 360.

Authority Cite: INA § 201(d) and 203(b)

## Employment-Based Priority Categories

### Employment-Based Preference Chart

Preference Category	Description	Numerical Limitation
First preference (EB-1)	Aliens with extraordinary ability	28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences. (28.6% of 140,000 = 40,040)
	Outstanding professions and researchers	
Second preference (EB-2)	Certain multinational executives and managers	28.6% of the worldwide employment-based preference level, plus any numbers not required by fifth preference. (28.6% of 140,000 = 40,040)
	Members of the professions holding advanced degrees	
Third preference (EB-3)	Aliens of exceptional ability in the sciences, art, or business	28.6% of the worldwide employment-based preference level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers" (28.6% of 10,000 = 30,040)
	Professionals and skilled workers (requiring 2 or more years of specific education, training, or experience)	
Fourth preference (EB-4)	Other (unskilled) workers	10,000
Fifth preference (EB-5)	Certain special immigrants	7.1% of the worldwide level (7.1% of 140,000 = 9,940)
	Employment creation, for immigrants who invest in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time jobs for U.S. workers	7.1% of the worldwide level, at least 3,000 of which are reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers (7.1% of 140,000 = 3,940)

## Employment-Based Positions at Colleges and Universities



How are colleges and universities treated differently than typical employers?

How does that distinction impact procedures throughout the permanent resident process?

Occupations that require college or university classroom teaching duties benefit from special recruitment and documentation standards that allow the employer to select the alien if he or she is more qualified than any of the U.S. workers who applied for the job, whereas the standard for non-college/university teaching positions is whether any of the U.S. workers who applied for the job possessed the minimum requirements for the job, even if the alien is better qualified. The employer can also opt to use the results of its own competitive recruitment procedure that resulted in the selection of the alien, provided the application is filed no later than 18 months after the alien was selected.

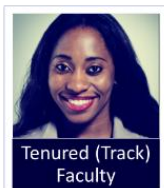
Special provisions apply to college and university teacher application when applied to labor certification. Refer to that section for more information.

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Source: NAFSA Advisers Manual 360

## Employment-Based Beneficiaries

Your institution may sponsor a variety of employment-based beneficiaries. From faculty positions to non-faculty positions, your institution must determine which roles benefit the institutional mission and what capacity you have to provide them support services. The sample positions listed next, provide insights that may impact whether you choose to sponsor that position.



Tenured (Track)  
Faculty



Senior-level  
Researchers



Junior-level  
Researchers



Post-doctoral  
Researchers



IT Professionals



Other Staff



### In Practice: EB Positions at Your Institution

Review the sample employment-based institutional positions.  
Which positions are likely to be offered LPR services?

**Grouping:**

Individual

Position	Considerations	LPR Sponsorship?
Tenured and tenure-track faculty	<ul style="list-style-type: none"> <li><input type="checkbox"/> High level of predictability in timing and hiring procedures</li> <li><input type="checkbox"/> Individuals most likely to qualify for variety of categories</li> <li><input type="checkbox"/> Individuals most likely to remain at your institution throughout the long PR process</li> <li><input type="checkbox"/> High level of interest from administration in keeping these people at your institution</li> <li><input type="checkbox"/> Most routine processing since all will be eligible for “special handling” labor certification and/or Outstanding Professor/Researcher category</li> <li><input type="checkbox"/> High visibility – this is a double-edged sword</li> </ul>	
Senior level researchers	<ul style="list-style-type: none"> <li><input type="checkbox"/> Individuals most likely to qualify for variety of categories</li> <li><input type="checkbox"/> Medium range predictability in timing and hiring procedures</li> <li><input type="checkbox"/> Individuals likely to remain at your institution through the long PR process</li> <li><input type="checkbox"/> High level of interest from research sector of the university in keeping these people at your institution</li> <li><input type="checkbox"/> High level of anxiety in some fields since the individuals may need to move quickly to permanent residency in order to qualify as “principal investigators” in grant acquisition</li> <li><input type="checkbox"/> Fairly non-routine processing necessitating medium-high level of expertise from staff, e.g., reduction in recruitment labor certification and Outstanding Professor/Researcher categories are most likely options</li> <li><input type="checkbox"/> High visibility – this is a double-edged sword</li> </ul>	
Junior level researchers	<ul style="list-style-type: none"> <li><input type="checkbox"/> Low level of predictability in timing and hiring procedures</li> <li><input type="checkbox"/> Individuals less likely to qualify for a variety of categories, probably limited to reduction in recruitment labor certification</li> <li><input type="checkbox"/> Somewhat lower level of interest from research sector of the university in keeping these people at your institution – this is very case-specific</li> <li><input type="checkbox"/> Non-routine processing necessitating high level of expertise from staff, e.g., reduction in recruitment labor certification is most likely option</li> <li><input type="checkbox"/> Lower level of visibility, but you become a huge hero to the sponsoring faculty member who desperately needs this particular researcher</li> </ul>	

Position	Considerations	LPR Sponsorship?
Post-doctoral researchers	<ul style="list-style-type: none"> <li><input type="checkbox"/> Extremely low level of predictability in timing and hiring procedures</li> <li><input type="checkbox"/> Level of interest from sponsoring faculty ranges from hostility to indifference to desire to help up-and-coming young scientists</li> <li><input type="checkbox"/> Individuals unlikely to qualify for categories outside reduction in recruitment labor certification</li> <li><input type="checkbox"/> Serious timing issues – most post-doc appointments are short duration. Will this individual be at your institution at the end of the process? Is it worth the investment?</li> <li><input type="checkbox"/> Caution about opening Pandora's Box</li> <li><input type="checkbox"/> You may want to consider leaving this category unmentioned in your written policy so that you have the flexibility to take such cases in unusual circumstances. University politics are unpredictable</li> </ul>	
Information technology professionals including scientific programmers	<ul style="list-style-type: none"> <li><input type="checkbox"/> Medium predictability in timing and hiring procedures</li> <li><input type="checkbox"/> Scientific programmers may, in fact, be categorized as senior level researchers. Use caution in making early assumptions about how important these people may be to your campus.</li> <li><input type="checkbox"/> May be extremely high interest from sponsoring faculty or administration</li> <li><input type="checkbox"/> IT professionals have (at least in recent years) been a very mobile group. Will they stay long enough at your institution to complete the process? To make the investment worthwhile?</li> <li><input type="checkbox"/> Likely to be in a reduction in recruitment labor certification arena. Advertisement in this area for IT professionals may be tricky. This is particularly true for scientific programmers who may seem like ordinary IT professionals to DOL but the job may, in fact, require a PhD in a technical discipline like physics as well as IT background.</li> <li><input type="checkbox"/> May be high visibility cases – this is a double-edged sword</li> </ul>	
Staff other than IT, e.g., library professionals	<ul style="list-style-type: none"> <li><input type="checkbox"/> Variable predictability in timing and hiring procedures. If the procedures are highly regulated (for instance, if the position is part of a state classified personnel system), you may have little or no opportunity to help mold the search</li> <li><input type="checkbox"/> State institutions may unionize such positions</li> <li><input type="checkbox"/> Any visibility in offering such services to staff positions? Maybe, in some situations</li> <li><input type="checkbox"/> Very difficult to prove that there were no minimally qualified U.S. workers for such positions</li> <li><input type="checkbox"/> Mobility issues/timing issues</li> </ul>	

# Alien Labor Certification

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## Objectives:

- ☐ Review job descriptions: Does the job description pass the “sniff test”?
- ☐ Review documents for prevailing wage determination
- ☐ Discuss potential issues on the labor certification application
- ☐ Draw a flowchart mapping the steps and the responsible party for each stage

## Overview of Resources

Statutes/Regulations	INA 212(a)(5)(A) 20 CFR 656
Interpretation/Guidance	AM 12.A-12.F
Forms/Instructions	ETA 9089 Instructions ETA form 9141
Websites	<a href="http://www.doleta.gov">www.doleta.gov</a> <a href="http://www.onetonline.org">www.onetonline.org</a>

### DOL guidance

#### DOL guidance - TEGLs and TAG

Training and Employment Guidance Letters (TEGLs) (and the General Administration Letters (GALs) that preceded them) are the equivalent of DHS memoranda and DOS cables. Advisers who work with the H-1B category and with the Labor Certification process must be aware of the content of GALs and TEGLs affecting those areas.

\* GALs and TEGLs can be accessed on the DOL ETA website at: [wdr.doleta.gov/directives/](http://wdr.doleta.gov/directives/)

DOL stopped using the GAL format in November 2001. After that date, field guidance has been disseminated in the form of TEGLs. GALs that have not been subsequently rescinded remain valid guidance. At the beginning of each fiscal year, checklists are issued, by series, rescinding obsolete advisories and listing those remaining active. Series checklists will be issued until all advisories in the eliminated series have been rescinded. While a GAL may be rescinded, the GAL and any material transmitted with it may be retained by the SWA as long as it is useful.

The Technical Assistance Guide (TAG) is a codified collection of DOL field guidance on labor certifications. The TAG is not updated very consistently but is still a fruitful source of information for advisers.

The BALCA “Judge's Benchbook” is a source of guidance published by the Department of Labor's Office of Administrative Law Judges, to be used as a reference for the administrative law judges on the Board of Alien Labor Certification Appeals. It covers the permanent alien labor certification process and provides citations to BALCA precedent decisions.

\* Access the text and supplements of the BALCA Judge's Benchbook at: [www.oalj.dol.gov/LIBINA.HTM](http://www.oalj.dol.gov/LIBINA.HTM)



## Labor Certification

To qualify for lawful permanent residence in the second or third employment-based preference categories, an alien must normally have an offer of permanent, full-time employment from a U.S. employer as well as an individual alien labor certification from the Department of Labor.

### 2 essential ingredients for DOL to grant a labor certification

Alien labor certification is granted by the Department of Labor after it makes 2 essential findings:

1. There are not sufficient U.S. workers who are able, willing, qualified, and available to accept a particular position; and
2. Employing a foreign worker in the given occupation will not adversely affect the wages and working conditions of U.S. workers employed in that occupation

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Authority Cite: INA § 212(a)(5)(A)

The Department of Labor developed detailed regulations and procedures (20 C.F.R. Part 656) to standardize how these findings are made.

### DOL Standards for Granting Labor Certification

*The Department of Labor will make the above findings and issue an “alien labor certification” only if it is convinced of each of the items in this list. The checklist items have been distilled from DOL regulations and written policy guidance.*

- ☐ The employer has a bona fide, full-time, permanent position that offers wages and working conditions that are “prevailing” in the geographic area of employment
- ☐ The minimum requirements for the position are “normal,” and not “overly restrictive”
- ☐ The employer engaged in a good-faith recruitment effort, advertising the position using means and methods described in the regulations
- ☐ In its good-faith recruitment effort, the employer was unable to find a U.S. worker with the minimum qualifications for the occupation who was also ready, willing and able to accept the position, or, for college and university teacher cases, there were no U.S. workers who were at least as qualified as the alien worker

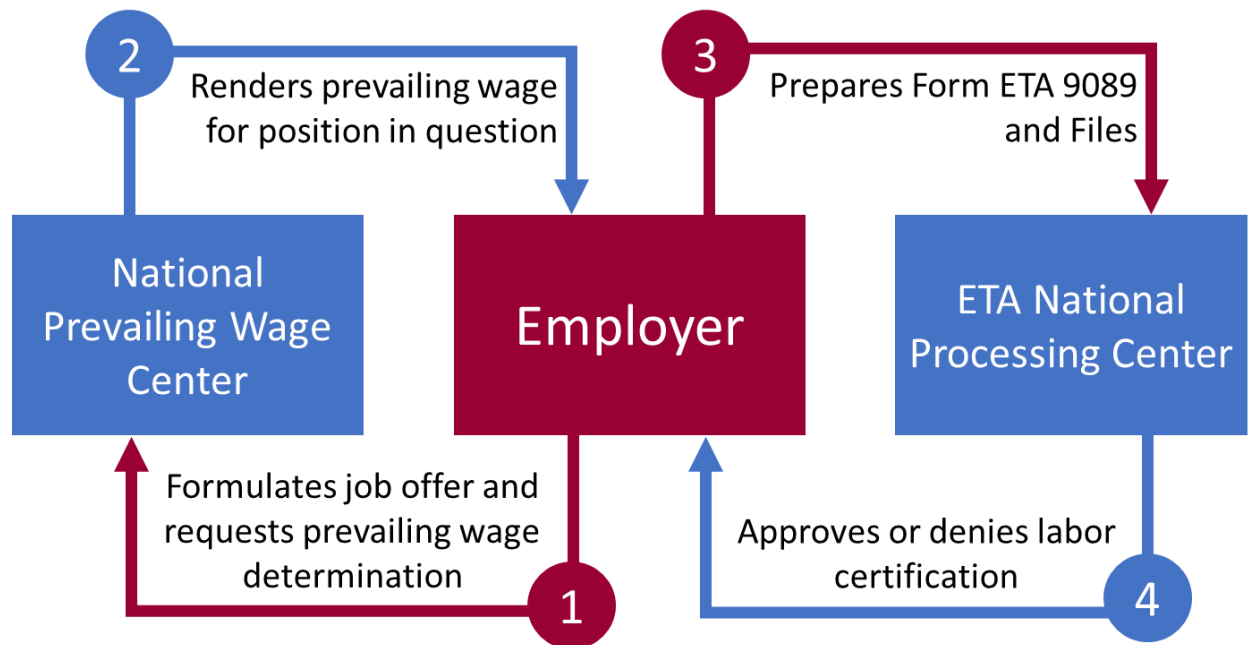
DOL will issue a labor certification only if:



- ✓ The prevailing wage is met or exceeded
- ✓ The job was made available to U.S. workers through an industry-appropriate recruitment effort that conforms to DOL regulations
- ✓ No able and available U.S. worker had the minimum qualifications needed to do the job, even if the skills of the alien exceeded those of the U.S. worker (note the important exception labor certifications for college and university teachers.)



### Procedures Involved in Labor Certification



### Parties and Roles in the Labor Certification Process

Employer	<ul style="list-style-type: none"> <li>• Formulates job offer, duties, minimum requirements, and wage</li> <li>• Obtains prevailing wage determination</li> <li>• Conducts recruitment campaign</li> <li>• Develops and maintains documentation</li> <li>• Prepares and files form ETA 9089</li> </ul>
NPWC	<ul style="list-style-type: none"> <li>• Upon request of employer, renders a prevailing wage determination (PWD) for the position in question</li> <li>• Reviews employer-provided wage survey data, if any</li> </ul>
Atlanta National Processing Center	<ul style="list-style-type: none"> <li>• Approves or denies labor certification</li> <li>• Conducts audits</li> <li>• Manages supervised recruitment and follow up</li> <li>• Responds to employer challenges to labor cert determinations</li> </ul>

## Job Opportunity

Job Opportunity

Qualifications

Wage  
Requirements

Notice and  
Recruitment

- + Supervisory Duties
- + Special Skills
- + Experience
- + Education
- Minimum Requirements

### Developing the Job Description

With an eye toward the full scope of the position, it is important to frame the job duties according to different levels. These categories, via the description will be factored into how the wage is computed as well. Look at what's required on Form ETA 9089.

### Form ETA 9089, Part H

H. Job Opportunity Information (Where work will be performed)			
1.	Primary worksite (where work is to be performed) address 1	<input type="text"/>	
	Address 2	<input type="text"/>	
2.	City:	<input type="text"/>	
	State:	<input type="text" value="Select State"/>	Postal code: <input type="text"/> - <input type="text"/>
3.	Job title	<input type="text"/>	
4.	Education: minimum level required	<input type="text" value="Select Education"/>	
4-A.	If Other is indicated in question 4, specify the education required:		
4-B.	Major field of study		
5.	Is training required in the job opportunity?	<input type="radio"/> Yes <input type="radio"/> No	5-A. If Yes, number of months training required: <input type="text"/>
5-B.	Indicate the field of training:		
6.	Is experience in the job offered required for the job?	<input type="radio"/> Yes <input type="radio"/> No	6-A. If Yes, number of months experience required: <input type="text"/>
7.	Is there an alternate field of study that is acceptable?	<input type="radio"/> Yes <input type="radio"/> No	
7-A.	If Yes, specify the major field of study:		
8.	Is there an alternate combination of education and experience that is acceptable?	<input type="radio"/> Yes <input type="radio"/> No	
8-A.	If Yes, specify the alternate level of education required: <input type="text" value="Select Education"/>		
8-B.	If Other is indicated in question 8-A, indicate the alternate level of education required:		
8-C.	If applicable, indicate the number of years experience acceptable in question 8: <input type="text"/>		

## Form ETA 9089, Part H

H. Job Opportunity Information Continued		
9.	Is a foreign educational equivalent acceptable?	* <input type="radio"/> Yes <input type="radio"/> No ?
10.	Is experience in an alternate occupation acceptable?	* <input type="radio"/> Yes <input type="radio"/> No
10-A.	If Yes, number of months experience in alternate occupation required:	<input type="text"/>
10-B.	Identify the job title of the acceptable alternate occupation:	<input type="text"/>
11.	Job duties - If submitting by mail, add attachment if necessary. Job duties description must begin in this space.	<div style="border: 1px solid black; height: 100px; width: 100%;"></div>
12.	Are the job opportunity's requirements normal for the occupation?	* <input type="radio"/> Yes <input type="radio"/> No
If the answer to this question is No, the employer must be prepared to provide documentation demonstrating that the job requirements are supported by business necessity.		
13.	Is knowledge of a foreign language required to perform the job duties?	* <input type="radio"/> Yes <input type="radio"/> No
If the answer to this question is Yes, the employer must be prepared to provide documentation demonstrating that the language requirements are supported by business necessity.		
14.	Specific skills or other requirements - If submitting by mail, add attachment if necessary. Skills description must begin in this space	<div style="border: 1px solid black; height: 100px; width: 100%;"></div>
15.	Does this application involve a job opportunity that includes a combination of occupations?	* <input type="radio"/> Yes <input type="radio"/> No
16.	Is the position identified in this application being offered to the alien identified in Section J?	* <input type="radio"/> Yes <input type="radio"/> No
17.	Does the job require the alien to live on the employer's premises?	* <input type="radio"/> Yes <input type="radio"/> No
18.	Is the application for a live-in household domestic service worker?	* <input type="radio"/> Yes <input type="radio"/> No
18-A.	If Yes, have the employer and the alien executed the required employment contract and has the employer provided a copy of the contract to the alien?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

On Form ETA 9089 at item H, the employer must describe the job opportunity, including the duties of the job and the minimum requirements needed to adequately perform the job.

In addition, the job opportunity must be:

- ☐ Located in the United States
- ☐ Permanent - the employer must intend to employ the alien for the foreseeable future. The position cannot have a specified end date and cannot be seasonal or intermittent
- ☐ Full-time
- ☐ A bona fide job opportunity
- ☐ In compliance with prevailing wage requirements

## Minimum Requirements

Item H of Form ETA 9089 requires the employer to specify the minimum requirements for the job, including minimum education, training, experience, and other special requirements.

An employer must be prepared to document that the requirements it specifies are its *actual minimum requirements* and that it has not hired the alien or other workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.

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Authority Cite: 20 C.F.R. § 656.17(i)

Essentially, the employer needs to do a two-step evaluation to determine if the requirements for the job truly are the minimum requirements:

1. Did the alien fulfill the minimum requirements at the time he or she was first hired into the current or a substantially comparable job?
2. Has the employer ever hired anyone with less education, training or experience for a substantially comparable job?

If the alien did not possess the minimum requirements at the time of hire, or the employer has previously hired individuals with less education, training, or experience for the job, DOL will view the requirements specified by the employer as not being the *actual* minimum requirements for the job, unless the employer can document either that:

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Authority Cite: 20 C.F.R. § 656.17(i)(3)

1. The alien gained the experience while working for the employer in a position that was “not substantially comparable to the position for which certification is being sought” or
2. There are significant objective business circumstances that now make it infeasible to train a lesser-qualified individual.

For purposes of this analysis, DOL defines a “substantially comparable” job or position to mean “a job or position requiring performance of the same job duties more than 50 percent of the time.”

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Authority Cite: 20 C.F.R. § 656.17(i)(5)(ii)



Should HR be central to this job description/job requirements process? If so, in what way?

## Sources of Job Duty Descriptions

An employer should always take into account these sources in developing the job duties description:

- The employer's standard job description for the job title, if one exists
- The *tasks* description in the job's O\*NET entry

## Help from HR

An employer should be familiar with its own official job or position descriptions and use them to develop the labor certification job offer. Requesting requirements that stray too far from the official description may have internal institutional implications. In the event of a DOL audit, an employer must be prepared to document that the job requirements reflected in the application for labor certification truly represent its minimum job requirements. DOL states that actual minimum requirements can be documented by "furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records."

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Authority Cite: 20 C.F.R. § 656.17(i)(5)(ii)

## O\*NET Job Zone Information

Within O\*NET, occupations are grouped in several different ways to give a quick overview of the level of complexity, responsibility, etc. that is generally associated with the occupation. One of the general groupings is the "Job Zone." The Job Zone is a grouping of occupations that are similar, not necessarily in what they do, but in how an individual gets into the field, how much experience and education is needed to get into the occupation and how much on-the-job training is needed. There are five Job Zones in O\*NET. The following chart was compiled from the more detailed Job Zone information available on the O\*NET online help pages and is intended to provide a quick overview of how various occupations are grouped by Job Zone.

## Analyzing the Specific Vocational Preparation (SVP) level

The SVP level for a given occupation is found in the Job Zone section of the occupation's description in O\*NET.

An occupation's Specific Vocational Preparation (SVP) level determines the total amount of education, training, and experience that can reasonably be required for an occupation as a minimum requirement.

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Authority Cite: 20 C.F.R. § 656.3 definitions. SVP defined.

...the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation. Lapsed time is not the same as work time. For example, 30 days is approximately 1 month of lapsed time and not six 5-day work weeks, and 3 months refers to 3 calendar months and not 90 work days.

SVP level	Total training, experience, and education required
1	Short demonstration
2	Beyond short demonstration up to 1 month
3	1 month to 3 months
4	3 months to 6 months
5	6 months to 1 year
6	1 year to 2 years
7	2 years to 4 years
8	4 years to 10 years
9	10 years and over

Authority Cite: DOL ETA website at <http://www.flcdatcenter.com/svp.aspx>

### Beware of Common Errors in the Job Description

Review your job descriptions to see if they fall into any of these traps. For more information, refer to the NAFSA Advisers Manual 360.

Preferred Requirements	<ul style="list-style-type: none"> <li>Under the basic recruitment process at 20 CFR §656.17, preferences used in advertisements will be considered “implicit requirements.” If preferences appear in advertisements, filing notices, or other recruitment steps, they must also be listed as job requirements in Section H of the ETA Form 9089. If an employer places requirements or preferences in its advertisements that are not listed on the ETA Form 9089 as requirements, the labor certification application will be denied as being in violation of 20 C.F.R. § 656.17(f)(6).</li> <li>“While an employer recruiting under the basic process for a college or university professor can certainly use its preferences in <i>evaluating</i> the relative qualifications of all applicants, in order to ensure that the applicant pool is not improperly restricted, an employer may only include its requirements in its advertisements, not its preferences.”</li> </ul>
Source: NAFSA Advisers Manual 360 Section: 12.B.2.2.1	

Alternative Experience or Educational	<ul style="list-style-type: none"> <li>• The alternative requirements are substantially equivalent to the position's primary requirements; and</li> <li>• "If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable."</li> </ul> <p style="text-align: right;">Authority Cite: 20 C.F.R. § 656.17(h)(4) Source: NAFSA Advisers Manual 360 Section: 12.B.2.4</p>
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Unduly Restrictive	<ul style="list-style-type: none"> <li>• Required proficiency in a language other than English [ <a href="#">20 CFR 656.17(h)(2)</a> ]</li> <li>• Years of experience required to perform the job in excess of those specified by the Specific Vocational Preparation (SVP).</li> <li>• College degrees required for jobs where technical school or on-the-job training is all that has been previously been required by the employer or in the industry.</li> <li>• Combining jobs into one that is normally performed by more than one worker.</li> <li>• <u>Knowledge or skills required that cannot be obtained in the United States.</u></li> </ul> <p style="text-align: right;">Authority Cite: Technical Assistance Guide Source: NAFSA Advisers Manual 360 Section: 12.B.2.5</p>
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### Business Necessity

DOL will deny an application for alien labor certification that specifies unduly restrictive requirements, unless the employer can prove that the requirements arise out of "business necessity." Requirements that would normally be deemed unduly restrictive can sometimes be justified if an employer convincingly establishes that the requirements arise out of "business necessity." DOL evaluates business necessity arguments using a two-prong test, where the employer must demonstrate that:

Authority Cite: 20 C.F.R. § 656.17(h)(1)

### Test for Business Necessity

- The job duties and requirements reasonably relate to the occupation in the context of the employer's business; **and**
- The job duties and requirements are essential to perform the job in a reasonable way.

Source: NAFSA Advisers Manual 360, 12.B.2.7

**In Practice: Director of Marketing Ads**

Compare each of the Director of Marketing ad descriptions. What are some concerns?

**Grouping:**

Pairs

**List the issues here:**

**Ad # 1:**

Director of Marketing and Research for furniture retailer in Washington DC: market research/analysis, prepare cost valuation, pricing strategies and financial reports. BS Business, economics or related field and 2 years exp. in financial analysis. Fax resumes and salary requirements to Yogi Bear (202) 555-5555.

**Ad # 2:**

Director of Marketing and Research: Analyze, identify and develop markets of high growth opportunities and assist in the expansion of the company into those new markets. Assist in the capture and negotiation of new corporate accounts. Recommend pricing strategies after thorough competitive and market research, analysis and cost valuation. Manage and oversee deal structuring and customer leasing and financing. Analyze and assess company's competitive advantage in the marketplace. Prepare and submit financial reports to the president of the company, summarizing the financial health of the company. Conduct product presentation and present project proposals to clients. Position requires individual to build and maintain relationship with clients, vendors and other individuals instrumental to business expansion. Requires: BS in marketing or economics and 2 years' experience in financial analysis. \$40,000 Send two copies of resume to: DOES, 609 H St., NE Room 535, Washington, DC 20002. Reference JO # 5126



## Qualifications

Job Opportunity

Qualifications

Wage  
Requirements

Notice and  
Recruitment

### Labor Certification and U.S. Workers

- Proffered job must be offered at the actual, minimum requirements
- U.S. workers can only be rejected for job-related reasons
- DOL will not “certify” a PERM application if a qualified U.S. worker who is ready, willing and able applies for the position
- No DOL certification, No PR
- Employer is not required to hire the U.S. worker

### Form ETA 9089, Part J

**J. Alien Information Continued (This section must be filled out. This information must be different from the agent or attorney information listed in Section E).**

11.	Education: highest level achieved relevant to the requested occupation:	* <input type="text" value="Select Education"/>	
11-A.	If Other indicated in question 11, specify	<input type="text"/>	
12.	Specify major field(s) of study	<input type="text"/>	
13.	Year relevant education completed	<input type="text"/>	
14.	Institution where relevant education specified in question 11 was received	<input type="text"/>	
15.	Address 1 of conferring institution	<input type="text"/>	
	Address 2	<input type="text"/>	
16.	City:	<input type="text"/>	State: <input type="text" value="Select State"/>
	Province:	<input type="text"/>	
	Country:	<input type="text" value="Select Country"/>	Postal code: <input type="text"/>
17.	Did the alien complete the training required for the requested job opportunity, as indicated in question H.5?	* <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A	
18.	Does the alien have the experience as required for the requested job opportunity indicated in question H.6?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A	
19.	Does the alien possess the alternate combination of education and experience as indicated in question H.8	* <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A	
20.	Does the alien have the experience in an alternate occupation specified in question H.10?	* <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A	
21.	Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?	* <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A	
22.	Did the employer pay for any of the alien's education or training necessary to satisfy any of the employer's job requirements for this position?	* <input type="radio"/> Yes <input type="radio"/> No	
23.	Is the alien currently employed by the petitioning employer?	* <input type="radio"/> Yes <input type="radio"/> No	



Can the institution ensure that the beneficiary, who we deem most qualified, be the one who ultimately fills the role?

## Examining the Alien's Qualifications

The employer must show not only that there are no U.S. workers available, willing, and qualified for the job, but also that the alien is qualified for the job.

The most important thing to remember when examining whether the alien's qualifications meet the minimum requirements for the job is that **the alien must have possessed the minimum qualifications required for the job before he or she was hired into the position.**

### Documenting Minimum Requirements

- Although it is important to assess the alien's qualifications for the job, employers should approach defining the minimum job requirements based not on what qualifications the alien has, but rather based on the minimum knowledge, skills, and experience and education or training are needed to adequately perform the duties of the job.
- Minimum requirements that exactly "mirror" the alien's qualifications might be suspect on their face as being "overly restrictive." While the skills, knowledge and experience of the employee often serve as a point of reference, those qualifications should not be the factor driving the description of minimum requirements.



Here are two situations that you should particularly be on the lookout for:

1. A credential (education, license, etc.) or skill listed as being a minimum requirement for the job was not officially obtained by the alien until after he or she was hired for the job.
2. Years of experience listed as being a minimum requirement for the job were gained "on the job" while working for the sponsoring employer, in a position that is the same or similar to the job that's the basis for the labor certification application.

In the first scenario, the position of the Department of Labor will be that if the alien was hired before the credential or experience was obtained, then that credential must not be an actual minimum requirement to enter the occupation. In the second scenario, the position of the Department of Labor will be that experience gained "on the job" is like "training," and if the employer was willing to train the alien employee, then they should be willing to train the U.S. employee.

## Capturing Qualifications

### Form ETA 9089, Part K

**K. Alien Work Experience**

List all jobs the alien has held during the past 3 years. Also list any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification.

1. Employer name:	*	<input type="text"/>
2. Address 1	*	<input type="text"/>
Address 2		<input type="text"/>
3. City:	*	<input type="text"/>
		State: <input type="text" value="Select State"/>
Province:		<input type="text"/>
Country:		<input type="text" value="Select Country"/>
		Postal code: <input type="text"/> <input type="text"/>
4. Type of Business:	*	<input type="text"/>
5. Job Title:	*	<input type="text"/>
6. Start date:	*	<input type="text"/>
		Enter date as mm/dd/yyyy
7. End date:		<input type="text"/>
		Enter date as mm/dd/yyyy
8. Number of hours worked per week	*	<input type="text"/>
9. Job Details (duties performed, use of tools, machines, equipment, skills, qualifications, certifications, licenses, etc. Include the phone number of the employer and the name of the alien's supervisor.)	*	<div><div></div></div>

#### Listing the Alien's Special Qualifications on ETA Form 9089.

PERM ETA Form 9089 does not have a separate section for listing the alien's "special qualifications and skills" such as licensures, certifications, or specialized knowledge or skills. If such special qualifications are listed as requirements in item H.14.; however, it is important to indicate somewhere on the 9089 that the alien does indeed possess those special qualifications. A convenient place to do this is in the "job details" field at item K.9., which asks for "duties performed, use of tools, machines, equipment, skills, qualifications, certifications, licenses, etc." for experiences and jobs held by the alien.

Source: NAFSA Adviser's Manual 360



### In Practice: Data Analyst, Job Description and Qualifications

Read the case study and consider the qualifications of the beneficiary.

Grouping:

Table

Ms. Misty Classification has been working as a Research Assistant in the National Research University's Space Science Institute for the past three years, first as a Program Coordinator and then as a Data Analyst. The Department sends you this job description:

**Data Analyst:** Assist Astronomers and other research scientists in the reduction and analysis of Wobbli Space Telescope (WST) scientific, calibration, and engineering data. Responsible for providing direct support to research scientists to allow them to reduce and analyze WST scientific data for one instrument using data products, software and hardware provided by NRUSI; participate in training for research scientists, support in the analysis of WST data; receive, archive, and verify calibration data for completeness and adherence to formats; generate calibration data sets and verification documentation; Assist staff scientists in all phases of astronomical investigation including the collection, reduction, organization, analysis and interpretation of data. Requirements are a BS in astronomy, physics or related field and 3 years exp. in astronomical research support function with strong data analysis experience. Familiarity with Scientific computing; expertise in data analysis; knowledge of IRAF and/or IDL, or other computer software packages and programming ability.

Ms. Classification graduated from York University in Canada with a BS in Astronomy in 2005. She was hired by NRUSI as a Program Coordinator three years ago with the following job description:

Work with the Wobbli Space Telescope proposers and instrument scientists to design and implement observation programs at the forefront of astronomy. Responsibilities include preparing observations for execution on the Wobbli Space Telescope.

Two years ago, she was promoted to her current position as a Data Analyst.

1. Can any of her experience at NRUSI be used to meet the 3-year requirement that the Data Analyst job description requires?
2. What questions would you ask to determine if the requirements in the SSI job description truly reflect the minimum requirements?

## Form ETA 9089, Part L

### L. Alien Declaration

*I declare under penalty of perjury that Sections J and K are true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine or imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.*

*In addition, I further declare under penalty of perjury that I intend to accept the position offered in Section H of this application if a labor certification is approved and I am granted a visa or an adjustment of status based on this application.*

1. Alien's last name	First name	Full middle name
2. Signature	Date signed	

**Note** – The signature and date signed do not have to be filled out when electronically submitting to the Department of Labor for processing, but must be complete when submitting by mail. If the application is submitted electronically, any resulting certification MUST be signed *immediately upon receipt* from DOL before it can be submitted to USCIS for final processing.

## Wage Requirements

Job Opportunity

Qualifications

Wage  
Requirements

Notice and  
Recruitment

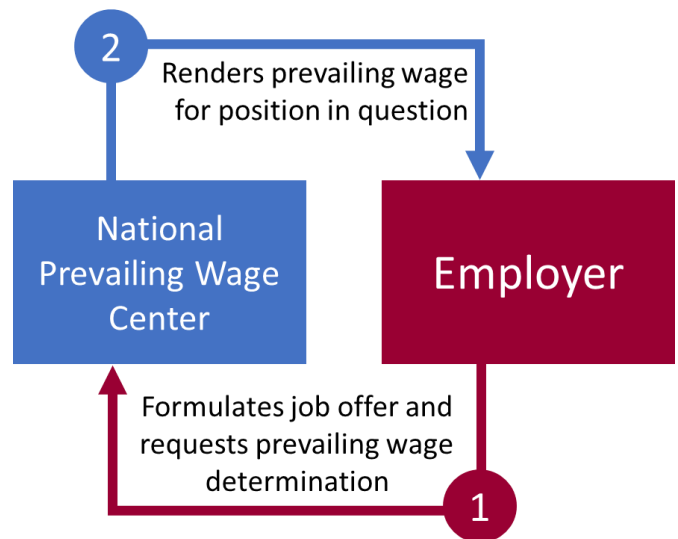


- Hiring a foreign national employee on a permanent basis must not adversely affect the working conditions and wages of U.S. workers
- Employer is required to pay the employee at least 100% of the “prevailing wage” for the job
- PWD provides the “quantitative parameters” to determine the appropriate wage level through the Specific Vocational Preparation (SVP) and job zone standards

## Prevailing Wage Process

After receiving the employers ETA Form 9141, the NPWC will:

- Examine the employer's job description and requirements and assign an SOC/O\*NET occupational code classification to the job.
- Consider non-OES wage sources submitted by the employer:
  - If a collective bargaining agreement (CBA) wage is involved, the NPWC will consider that wage to be the prevailing wage.
  - If there is no CBA, but the employer has submitted wage survey data, the NPWC will first consider the employer-provided wage data. If the employer-provided data is acceptable, the NPWC will use it to make its prevailing wage determination.
- If there is no collective bargaining agreement, and the employer does not provide a survey or request a DBA/SCA wage determination, then the NPWC will assign a wage level (from Level 1 to Level 4) to the job and use the wage component of the DOL Occupational Employment Statistics (OES) Survey to determine the prevailing wage.
- ACWIA employers should identify themselves as an ACWIA employer on the ETA Form 9141, as recommended by DOL.
- The NPWC will then issue the prevailing wage determination (PWD).



## Prevailing Wage Determinations

F. Prevailing Wage Information (as provided by the State Workforce Agency )	
1. Prevailing wage tracking number (if applicable):	<input type="text"/> ?
2. SOC/O*NET (OES) Code:	* <input type="text" value="Select SOC Code"/> ?
3. Occupation title:	* <input type="text"/>
4. Skill level:	<input type="text" value="Select Level"/> ?
5. Prevailing wage:	* \$ <input type="text"/> Per * <input type="text" value="Select Wage Period"/>
6. Prevailing wage source:	* <input type="text" value="Select Wage Source"/> ?
6-A. If Other is indicated in question 6, specify:	<input type="text"/>
7. Determination date:	* <input type="text"/> Enter date as mm/dd/yyyy
8. Expiration date:	* <input type="text"/> Enter date as mm/dd/yyyy

## Wage Data

The NPWC can use the following sources of wage data to determine the prevailing wage. The source ultimately used by the NPWC to render the PWD should be indicated at item F.6. on Form ETA 9089.

- **OES wage data.** The wage component of the DOL Occupational Employment Statistics (OES) Survey is the default wage source for NPWC PWDs. The NPWC will use OES data to determine the prevailing wage, unless the employer has submitted a collective bargaining agreement, a DBA/SCA wage determination, or an acceptable employer-provided wage source. Also see “OES Wage Data” in Section 3.6.1. of the participant workbook.
- **Collective bargaining agreement.** If the job is covered by a collective bargaining agreement (CBA) (i.e., union wage rate) negotiated at arms-length between the union and the employer, the wage set forth in the CBA agreement is considered the prevailing wage for labor certification purposes. (Note: although a CBA will be considered the prevailing wage, the employer must still request a PWD from the NPWC and should submit proof of the CBA to the NPWC, so that it can render its PWD on the basis of the CBA). 20 C.F.R. § 656.40(b)(1).
- **DBA/SCA wage determinations.** Under pre-PERM rules, wage determinations under the Davis-Bacon Act (DBA) and the McNamara-O’Hara Service Contract Act (SCA) were per-se prevailing wages like CBA wages. Under PERM, however, they are treated as an alternative wage source that the employer can submit to the NPWC under the same procedure as for employer-provided data.
- **Employer-provided wage data.** At the time it files its request for a PWD with the NPWC, the employer can provide the NPWC with a wage survey that meets the requirements of 20 C.F.R. § 656.40(g). The NPWC must consider the employer-provided survey in making its determination. If the NPWC finds that the employer-provided survey is not acceptable, however, it will defer to OES wage data. An employer can submit either a *published* survey or an *employer-conducted* survey.

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20 C.F.R. § 656.40(b)



## Employer-Provided Wage

Wage data provided by an employer to the NPWC must meet DOL regulatory and policy standards to serve as the basis for an NPWC prevailing wage determination.

These regulations and policies establish the specific requirements for employer-provided wage surveys, including:

- The survey must be the most recent available
- The survey must reflect wages in area of intended employment
- The survey must reflect wages of workers similarly employed
- The survey must reflect wages across industries, unless covered by the ACWIA exception to the cross-industry standard
- The survey must be based on valid data and valid statistical methodologies

### DOL regulations and policies on employer-provided wage data

PERM: **Survey or other wage data**

20 CFR [656.40\(g\)\(2\)-\(3\)](#)

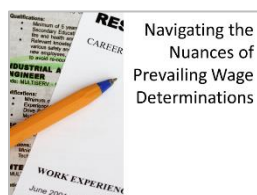
DOL: **Prevailing Wage Policies** applicable to all prevailing wage determinations

OFLC [Frequently Asked Questions and Answers](#)

DOL [Prevailing Wage Policy Guidance](#) (Nov. 2009)

DOL prevailing wage policy guidance incorporates the regulatory standards into a unified standard for employer-provided wage surveys, so employers must be familiar with that guidance. The next two subsections will discuss both DOL regulations and DOL policy guidance.

### *Need more information about prevailing wage determinations?*



NAFSA Adviser's Manual 360: Section 8 provides guidance about the prevailing wage process.

NAFSA e-Learning Seminar: This workshop does not go into depth about prevailing wage determinations. For additional instruction on this topic consider viewing this e-Learning seminar.

[www.nafsa.org/Professional\\_Resources/Learning\\_and\\_Training/e-Learning\\_Seminars/Navigating\\_the\\_Nuances\\_of\\_Prevailing\\_Wage\\_Determinations/](http://www.nafsa.org/Professional_Resources/Learning_and_Training/e-Learning_Seminars/Navigating_the_Nuances_of_Prevailing_Wage_Determinations/)





### In Practice: Institutional Policy

Prevailing Wage is TOO HIGH!! What now?

- Discuss how your institution will address issues relating to prevailing wage.

#### Grouping:

Pairs, Small Groups

The Department is offering a salary of \$25,000. The prevailing wage comes back from the NPWC as \$49,046, based on the OES survey wage data shown below. What might the issues be with these results, and what are the possible next steps?

### Prevailing wage results from the OES survey

Area	0720 (Baltimore, MD PMSA)
OES/SOC Code	19-4099
OES/SOC Title	Life, physical, and social science technicians, all other
O*Net Occupation Code	19-4061.00 (Click for Definition)
O*NET Occupation	Social Science Research Assistants
Level 1 Wage	\$11.18 hour - \$23,254 year
Level 2 Wage	\$15.31 hour - \$31,845 year
Level 3 Wage	\$19.45 hour - \$40,456 year
Level 4 Wage	\$23.58 hour - \$49,046 year
Job Zone	NA

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a BS in astronomy, physics or related field and 3 years exp. in astronomical research support function with strong data analysis experience. Familiarity with Scientific computing; expertise in data analysis; knowledge of IRAF and/or IDL, or other computer software packages and programming ability.

Work with the Wobbli Space Telescope proposers and instrument scientists to design and implement observation programs at the forefront of astronomy. Responsibilities include preparing observations for execution on the Wobbli Space Telescope.

## Notice and Recruitment

### Notice

In all labor certification cases (including Schedule A cases) filed under the PERM regulations, employers must give notice of the filing to their current employees, or to the occupation's bargaining representative if unionized. Additionally, if the employer had laid off any employees in the same occupation within 6 months of filing the labor certification application, the employer must also notify the laid-off workers of the filing. The notice must be completed between 30 and 180 days prior to filing the application.

If requested by DOL, employers must also be able to document that notice was provided.

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Source: NAFSA Advisers Manual 360, Section 12.E.1  
Authority Cite: 20 C.F.R. § 656.10(d); 20 C.F.R. § 656.17(k)

### General Requirements

Notices of the filing of the labor certification application must:

- Be provided between 30 and 180 days before filing the application;
- State the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;
- State that any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor;
- Provide the address of the appropriate Certifying Officer (Since all PERM cases are processed by the Atlanta National Processing Center (NPC), the notice must include the mailing address of the Atlanta NPC).

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Authority Cite: 20 CFR 656.10(d)(3)(ii)

### Form ETA 9089

e. General Information - All must complete this section	
23. Has the employer received payment of any kind for the submission of this application ?	* <input type="radio"/> Yes <input type="radio"/> No
23-A. If Yes, describe details of the payment including the amount, date and purpose of the payment: <div></div>	
24. Has the bargaining representative for workers in the occupation in which the alien will be employed been provided with notice of this filing at least 30 days but not more than 180 days before the date the application is filed?	* <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
25. If there is no bargaining representative, has a notice of this filing been posted for 10 business days in a conspicuous location at the place of employment, ending at least 30 days before but not more than 180 days before the date the application is filed?	* <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
26. Has the employer had a layoff in the area of intended employment in the occupation involved in this application or in a related occupation within the six months immediately preceding the filing of this application?	* <input type="radio"/> Yes <input type="radio"/> No
26-A. If Yes, were the laid off U.S. workers notified and considered for the job opportunity for which certification is sought?	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

Employer must provide notice that it will file a labor certification application.

- **Union positions:** Notice to bargaining representative
- **Non-union positions:** Paper notice of filing must be posted for 10 business days (weekends, holidays don't count, unless open for business) where other employees can see


## Recruitment

### Recruitment and Filing Best Practices

- Carefully establish job requirements
- Document that employee met job requirements at time of hire
- Create advertisements and conduct mandatory recruitment carefully
- Choose additional recruitment vehicles strategically
- Post notice for 10 consecutive business days (or notice to union), note dates and place of posting
- Use in-house media (intranet, newsletter) if employer usually posts such notices there

ETA 9089 Part I

*How does the response to questions 1 and 2 change your process for recruitment?*

I. Recruitment Information	
<b>a. Occupation Type - All must complete this section.</b>	
1. Is this application for a <b>professional occupation</b> , other than a college or university teacher? Professional occupations are those for which a bachelor's Degree (or equivalent) is normally required?	* <input type="radio"/> Yes <input type="radio"/> No
2. Is this application for a college or university teacher? <b>If Yes, complete questions 2-A and 2-B below.</b>	* <input type="radio"/> Yes <input type="radio"/> No
2-A. Did you select the candidate using a competitive recruitment and selection process?	<input type="radio"/> Yes <input type="radio"/> No
2-B. Did you use the basic recruitment process for professional occupations?	<input type="radio"/> Yes <input type="radio"/> No
<b>b. Special Recruitment and Documentation Procedures for College and University Teachers - Complete only if the answer to question 1.a.2-A is Yes.</b>	
3. Date alien selected	<input type="text"/>  Enter date as mm/dd/yyyy
4. Name and date of national professional journal in which advertisement was placed:	<input type="text"/>
5. Specify additional recruitment information in this space. Add an attachment if necessary:	<div><div></div><div></div></div>

## Special Handling: The National Ad

### Special recruitment and documentation procedures for college and university teachers under 656.18

The special recruitment and documentation procedures of 20 C.F.R. § 656.18 under PERM are basically the same as the pre-PERM “Special Handling” procedures, but in the context of the PERM program.

#### Deciding to choose standard or special processing

The special recruitment documentation provisions of 656.18 are generally more advantageous than the standard provisions of 656.17, because 656.18 allows a school to use the competitive recruitment procedure that it has already undertaken to fill the teaching position. Although the employer is allowed to select the best-qualified college or university teacher under both 656.17 and 656.18, if the school opts for 656.17 recruitment, it is still subject to the same extensive pre-filing recruitment procedures that other standard filing cases are subject to (e.g., a SWA Job Order, 2 advertisements, 3 additional recruitment steps, etc.). The comparison presented in Resource 3-d on page 70 can help illustrate this. Circumstances where an employer might choose standard processing include: 1) the 18-month filing deadline was missed; 2) the position was not filled though a competitive recruitment procedure (e.g., it was for a research position that also includes some teaching). Other circumstances might also exist.

#### Comparison of 656.17 and 656.18 for college and university teachers

Requirement	656.17 standard	656.18 special
Prevailing Wage Determination	<ul style="list-style-type: none"><li>Required</li></ul>	<ul style="list-style-type: none"><li>Required</li></ul>
Internal Notice	<ul style="list-style-type: none"><li>Required</li></ul>	<ul style="list-style-type: none"><li>Required</li></ul>
Prohibition on unduly restrictive requirements	<ul style="list-style-type: none"><li>Unduly restrictive requirements prohibited</li></ul>	<ul style="list-style-type: none"><li>Unduly restrictive requirements probably prohibited</li></ul>
SWA Job Order	<ul style="list-style-type: none"><li>Required</li></ul>	<ul style="list-style-type: none"><li>Not required</li></ul>
Print advertisements	<ul style="list-style-type: none"><li>Standard requirements: 2 Sunday newspaper ads or 1 Sunday paper ad + 1 professional journal ad</li></ul>	<ul style="list-style-type: none"><li>1 national professional journal ad; may be in an electronic journal under certain circumstances</li></ul>
3 additional recruitment steps	<ul style="list-style-type: none"><li>Required</li></ul>	<ul style="list-style-type: none"><li>Not required, but must document any other recruitment sources used</li></ul>
Recruitment report	<ul style="list-style-type: none"><li>Standard report required</li></ul>	<ul style="list-style-type: none"><li>Special report on competitive Recruitment required</li></ul>

Requirement	656.17 standard	656.18 special
Deadlines	<ul style="list-style-type: none"> <li>Recruitment steps must occur between 180 – 30 days prior to filing</li> </ul>	<ul style="list-style-type: none"> <li>Selection under competitive recruitment can be no more than 18 months prior to filing</li> </ul>
Able to choose best qualified?	<ul style="list-style-type: none"> <li>Yes [see AM § 3.9.1.1.1, ‘Use of the “more qualified” standard for college/ university teacher applications filed under 656.17” on page 67]</li> <li>Employer's recruitment cannot include requirements or preferences that exceed the minimum requirements set forth on the ETA-9089</li> </ul>	<ul style="list-style-type: none"> <li>Yes</li> </ul>

### Third Preference (EB-3) Orientation

The employment-based third preference category is divided into 3 sub-categories:

1. Professionals
2. Skilled workers
3. Unskilled workers

The EB-3 *Professionals* category is also used by some colleges and universities. The EB-3 definition of *professionals* is virtually the same as the EB-2 definition of *member of the professions* and is also very similar to the definition of “specialty worker” for H-1B purposes. To qualify as a *professional*, it must be shown that “the alien holds a United States baccalaureate degree or a foreign equivalent” and “that the alien is a member of the professions.” The regulation requires that,

Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

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Authority Cite: 8 C.F.R. § 204.5(l)(C)

### Schedule A Occupations

Schedule A is comprised of certain occupations, as set forth at 20 CFR 656.15, for which DOL has determined there are not sufficient U.S. workers who are able, willing, qualified and available. In addition, Schedule A establishes that the employment of aliens in such occupations will not adversely affect the wages and working conditions of U.S. workers similarly employed. The occupations listed under Schedule A include:

Group I:	Group II:
<ul style="list-style-type: none"> <li>Physical Therapists</li> <li>Professional Nurses</li> </ul>	<ul style="list-style-type: none"> <li>Aliens of extraordinary ability</li> </ul>

Group I	Group II
<p><b>Physical Therapists</b> - who possess all the qualifications necessary to take the physical therapist licensing examination in the state in which they propose to practice physical therapy.</p> <p><b>Professional Nurses</b> - the alien (i) has a Commission on Graduates in Foreign Nursing Schools (CGFNS) Certificate, (ii) the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) exam, or (iii) the alien holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment.</p>	<p><b>Sciences or arts</b> (except performing arts) - Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.</p> <p><b>Performing arts</b> - Aliens of exceptional ability in the performing arts whose work during the past 12 months did require, and whose intended work in the United States will require, exceptional ability.</p>

### Schedule A Filing Specifications

An employer must apply for a labor certification for a Schedule A occupation by filing an ETA Form 9089, in duplicate, with the appropriate USCIS Service Center, and NOT with DOL.

Only U.S. employers offering the alien a qualifying job can petition for an alien in the EB-3 preference categories. An individual alien labor certification is required, unless the alien qualifies for an exception under Schedule A Group I (physical therapists and professional nurses, who are eligible for a “blanket” labor certification approval) and Schedule A Group II (aliens of exceptional ability in the sciences and performing artists of exceptional ability, which is a standard very similar to the extraordinary ability standard).

**Schedule A occupations are subject to prevailing wage and notice requirements but are EXEMPT from recruitment requirements.**



### **In Practice: Assistant Professor Special Handling**

Read and discuss the facts of the following case.

- List the issues you spot in the space provided to the left.
- Respond to the questions.

#### **Grouping:**

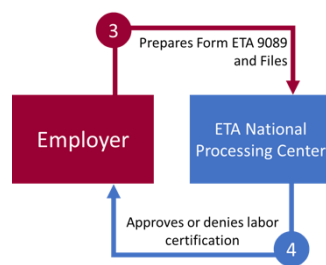
Table

Dr. Imatov Yakunin, an Assistant Professor of Physics and Astronomy who was recently promoted into a tenure-track faculty position. After obtaining his PhD 3 years ago from the University of Kiev in Ukraine, Dr. Yakunin began working at National Research University as a Visiting Instructor in J-1 exchange visitor status. He has a limited publication record but is starting to get some recognition in the field. Two years ago, the University ran ads in the Chronicle of Higher Education and in the leading journals for astronomical research. Five candidates, including Dr. Yakunin, were selected by the search committee for interviews. After lengthy deliberations, Dr. Yakunin was offered and accepted the job six months ago. Dr. Yakunin will primarily conduct research in black holes. He will be expected to teach an undergraduate course in astronomy.

1. Discuss the relevance of Dr. Yakunin's teaching duties to a college/university professor labor certification application. Is one course enough to qualify? What if instruction does not take place in a classroom (i.e., teaching of students in a lab, or in a clinical environment) - can it count?
2. Assuming his teaching duties are enough to qualify him for 656.18 special filing, how much time do you have to prepare and file the labor certification and request special handling without having to re-advertise?
3. What if the committee had offered the job first to another individual who declined the offer because the salary was too low and Dr. Yakunin, the committee's second choice, was then offered the position. Would that impact the application in any way?



## Labor Certification Procedures and Determination



After receiving the prevailing wage determination, you can complete the labor certification process. The Employer will then prepare and submit the Form ETA 9089 to the ETA National Processing Center.

### Where to find Form ETA 9089

Form ETA 9089 and instructions can be found online at:  
<http://www.plc.doleta.gov/>

### Form ETA 9089 Filing Options

Under the standard process and special handling processes, Form ETA 9089 can be completed and submitted online, or it can be printed and mailed to the Atlanta National Processing Center. Currently, however, most PERM applications and H-1B, H-1B1, and E-3 LCAs must be filed electronically. PERM applications filed by mail increase the likelihood of an audit.

### Overview of Labor Certification Processes

Labor Certification Determinations	<ul style="list-style-type: none"> <li>Labor certification under PERM is an attestation-based process, where the employer files its labor certification application (Form ETA 9089) with DOL but does not include supporting documentation at the time of filing. ETA 9089s will be reviewed initially by computer. If the application is not selected for audit, DOL will return the certified 9089 to the employer. DOL initially estimated that electronically filed PERM applications not selected for audit would be certified in 45 to 60 days.</li> </ul>
Audit Procedures	<ul style="list-style-type: none"> <li>Since PERM is an attestation-based filing system that does not require the employer to submit documentation with its application, DOL has instituted a new audit system to enforce the regulations. An employer can be audited either randomly or pursuant to factors that DOL has identified. An audit, if it occurs, will take place before DOL certifies the labor certification application.</li> </ul>
College and University Teachers	<ul style="list-style-type: none"> <li>PERM allows college and university employers of college and university teachers to use the results of the employer's own competitive recruitment procedure. PERM also preserves the statutory benefit that allows such employers to select the alien if he or she is more qualified than any U.S. applicant.</li> </ul>
Form	<ul style="list-style-type: none"> <li>A labor certification application is filed on Form ETA 9089. The ETA 9089 is a 10-page form that contains all the information that DOL will use to certify the labor certification application.</li> </ul>
Filing Methods	<ul style="list-style-type: none"> <li>An employer can file the ETA 9089 either electronically over the Internet, or by mail. No documentation is filed with the ETA 9089 but must be kept on file in case of an audit.</li> </ul>

Pre-Filing Requirements	<ul style="list-style-type: none"> <li>• Under PERM, employers must do the following <i>before</i> filing their ETA 9089 labor certification applications: <ul style="list-style-type: none"> <li>- Obtain a Prevailing Wage Determination (PWD) from the NPWC</li> <li>- Conduct recruitment and post notice of the filing</li> <li>- Develop and retain documentation of their compliance with the regulations in case of DOL audit</li> </ul> </li> </ul>
Prevailing Wage Requirements	<ul style="list-style-type: none"> <li>• Prevailing wage procedures and policies have changed as follows: <ul style="list-style-type: none"> <li>- All employers that file an ETA 9089 must obtain a PWD from the NPWC before filing their application.</li> <li>- The prior “5% rule” was eliminated effective March 8, 2005. An employer is obligated to offer 100% of the prevailing wage specified in the NPWC’s PWD.</li> <li>- Wage levels used by the NPWC in making PWDs have been expanded to 4 levels, effective March 8, 2005.</li> <li>- There are standardized procedures for employers to submit employer-provided wage data that the NPWC must consider in making a PWD.</li> </ul> </li> </ul>
Job Offer Requirements	<ul style="list-style-type: none"> <li>• PERM retained many of the same concepts and policies relating to job offer requirements but also changed the following areas: <ul style="list-style-type: none"> <li>- Actual minimum requirements and alternate experience requirements</li> <li>- The Dictionary of Occupational Titles (DOT) is replaced by O*NET as the source of occupational standards</li> </ul> </li> </ul>
Revocation of Labor Certifications	<ul style="list-style-type: none"> <li>• After issuance, a labor certification may be nullified as follows: <ul style="list-style-type: none"> <li>- By DOL, if it finds that certification was not justified</li> <li>- By DHS or DOS, if either agency or a court makes a finding of fraud or willful misrepresentation of a material fact</li> </ul> </li> </ul>

### Filing a Schedule A Application with USCIS

Employers filing I-140 petitions under Schedule A for physical therapists, professional nurses, and aliens of exceptional ability in the sciences or arts must complete and sign a Form ETA 9089. However, they do not file the Form ETA 9089 with DOL, but rather include a signed but uncertified 9089 with the employer’s I-140 petition filed with the Nebraska Service Center. Since Schedule A ETA 9089s are not filed with or adjudicated by DOL, they cannot be filed online.

## ETA 9089 Part M

Who is considered the preparer?

### M. Declaration of Preparer

1. <b>Was the application completed by the employer?</b> If No, you must complete this section.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

*I hereby certify that I have prepared this application at the direct request of the employer listed in Section C and that to the best of my knowledge the information contained herein is true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine, imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.*

2. Preparer's last name	First name	Middle initial
3. Title		
4. E-mail address		
5. Signature	Date signed	

**Note** – The signature and date signed do not have to be filled out when electronically submitting to the Department of Labor for processing, but must be complete when submitting by mail. If the application is submitted electronically, any resulting certification **MUST** be signed *immediately upon receipt* from DOL before it can be submitted to USCIS for final processing.

### Authorized Parties

Two types of users are allowed to prepare PERM applications using the online system:

- Employers, and
- Employer's Attorneys or Agents

The employer must register to use the PERM online system. The registration feature is available for employers only. After registering, employers can create sub-accounts for their employees or attorneys, so that these users can submit PERM applications on behalf of the registered employer. Those registered as an employer can manage multiple employees and attorney/agents using the PERM Online system.

### Employees, Attorneys, and Agents

Employers can create and manage user accounts for their employees, attorneys or agents. Only the employer can create sub-accounts under their employer account. Users with sub-accounts can enter, edit, reuse, and withdraw PERM applications, but they cannot create new user accounts or edit the employer's business information.

## ETA 9089 Part N

### N. Employer Declaration

By virtue of my signature below, **I HEREBY CERTIFY** the following conditions of employment:

1. The offered wage equals or exceeds the prevailing wage and I will pay at least the prevailing wage.
2. The wage is not based on commissions, bonuses or other incentives, unless I guarantees a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage.
3. I have enough funds available to pay the wage or salary offered the alien.
4. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.
5. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.
6. The job opportunity is not:
  - a. Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or
  - b. At issue in a labor dispute involving a work stoppage.
7. The job opportunity's terms, conditions, and occupational environment are not contrary to Federal, state or local law.
8. The job opportunity has been and is clearly open to any U.S. worker.
9. The U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons.
10. The job opportunity is for full-time, permanent employment for an employer other than the alien.

**I hereby designate** the agent or attorney identified in section E (if any) to represent me for the purpose of labor certification and, by virtue of my signature in Block 3 below, **I take full responsibility** for the accuracy of any representations made by my agent or attorney.

**I declare** under penalty of perjury that I have read and reviewed this application and that to the best of my knowledge the information contained herein is true and accurate. *I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine or imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.*

1. Last name	First name	Middle initial
2. Title		
3. Signature	Date signed	

**Note** – The signature and date signed do not have to be filled out when electronically submitting to the Department of Labor for processing, but must be complete when submitting by mail. If the application is submitted electronically, any resulting certification **MUST** be signed *immediately upon receipt* from DOL before it can be submitted to USCIS for final processing.



### In Practice: Institutional Procedures for Labor Certification

Use the employer declaration to draw a flowchart mapping the step and the responsible party for each stage.

- Who shares the responsibility?
- Where are there gaps?
- Where do you need more support?

#### Grouping:

Individual

#### N. Employer Declaration

*By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment:*

1. The offered wage equals or exceeds the prevailing wage and I will pay at least the prevailing wage.
2. The wage is not based on commissions, bonuses or other incentives, unless I guarantees a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage.
3. I have enough funds available to pay the wage or salary offered the alien.
4. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.
5. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.
6. The job opportunity is not:
  - a. Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or
  - b. At issue in a labor dispute involving a work stoppage.
7. The job opportunity's terms, conditions, and occupational environment are not contrary to Federal, state or local law.
8. The job opportunity has been and is clearly open to any U.S. worker.
9. The U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons.
10. The job opportunity is for full-time, permanent employment for an employer other than the alien.

# Non-Labor Certification Options

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## Objectives:

- ❑ Identify adjudication procedures for Employment-Based (EB) applications
- ❑ Review qualifications for extraordinary, NIW, and outstanding petitions
- ❑ Identify action items for institutional policy and procedures

## Overview of Resources

Statutes/Regulations	INA 203(b) 8 CFR 204.5
Interpretation/Guidance	AM360 13.B

### DHS guidance

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#### DHS guidance - Memoranda and Field Manuals

The DHS “rapid-delivery” vehicle for getting interpretive guidance to its field offices is the Memorandum. DHS memoranda are prepared by DHS headquarters staff and issued usually through the office of an Associate Commissioner level official or higher, or the office of the DHS General Counsel, after the content of the policy guidance has been approved at the necessary levels within DHS.

DHS also collects policy and procedural guidance in Field Manuals, including the Inspector's Field Manual (IFM) and the Adjudicator's Field Manual (AFM). DHS often keys the contents of its memoranda to specific chapters and sections within the Field Manuals, using the memoranda actually to announce changes and updates to the Field Manuals.

## USCIS Adjudication

### Preponderance of Evidence

- Evidentiary standard for administrative processes is established by the Administrative Procedures Act and decisions applying the Act
- Generally construed to mean that approval “demands only 51% certainty,” or that the evidence more likely than not warrants approval
- USCIS guidance recognizes “preponderance of the evidence” applies to its decisions
- Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant has satisfied the standard of proof
- If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition
- It can be useful to remind, very politely, adjudicating officers of this standard

## Kazarian Process Analysis

USCIS policy guidance interprets and applies the 9th Circuit’s *Kazarian v. USCIS* (9th Cir. March 4, 2010) decision, establishing a “two-part approach for evaluating evidence submitted in support of all petitions filed for EB-1 Aliens of Extraordinary Ability, Outstanding Professors or Researchers, and EB-2 Aliens of Exceptional Ability.”

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Source: [USCIS Policy Memorandum PM-602-0005.1](#) (December 22, 2010), *Evaluation of Evidence Submitted with Certain Form I-140 Petitions* (AFM Update AD 11-14), updating Chapter 22.2 of the USCIS Adjudicator’s Field Manual

### Step 1

USCIS adjudicators evaluate whether **evidence meets any of the regulatory criteria**.

The determination in Part One is limited to determining whether the evidence submitted with the petition is comprised of at least two of the six regulatory criteria, applying a preponderance of the evidence standard.

### Part One: Establishing the preponderance of evidence.

USCIS guidance implementing Kazarian standards requires USCIS adjudicators to first evaluate whether the petitioner has established by a “preponderance of the evidence” that at least two of the following kinds of documentation have been submitted:

- A. Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- B. Documentation of the alien's membership in associations in the academic field which require outstanding achievements in the academic field;
- C. Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
- D. Evidence of the alien's participation as the judge of the work of others in the same or an allied academic field;
- E. Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
- F. Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

Authority Cite: 8 C.F.R. § 204.5(i)(3)(i)



## Step 2

USCIS adjudicators must consider all of the evidence in totality in making the final merits determination as to whether petitioner has demonstrated, by a **preponderance of the evidence**, that the alien is outstanding/is recognized internationally as outstanding in the academic field specified in the petition.

### Part Two: Evaluating the totality of the evidence

In Part Two of the analysis, the adjudicator “must consider all of the evidence in totality in making the final merits determination” as to whether the petitioner has demonstrated by a preponderance of the evidence that the alien is outstanding, i.e., whether the evidence as a whole establishes that:

- the alien is recognized internationally as outstanding in the academic field specified in the petition

The USCIS Policy Memorandum PM-602.005.1 provides the following guidance to adjudicators:

Part Two: Final Merits Determination. Meeting the minimum requirement by providing at least two types of initial evidence does not, in itself, establish that the alien in fact meets the requirements for classification as an outstanding professor or researcher under section 203(b)(1)(B) of the INA. The quality of the evidence also must be considered. In Part Two of the analysis in each case, USCIS officers should evaluate the evidence together when considering the petition in its entirety to make a final merits determination of whether or not the petitioner, by a preponderance of the evidence, has demonstrated that the alien is recognized internationally as outstanding in a specific academic area.

If the USCIS officer determines that the petitioner has failed to demonstrate these requirements, the USCIS officer should not merely make general assertions regarding this failure. Rather, the USCIS officer must articulate the specific reasons as to why the USCIS officer concludes that the petitioner, by a preponderance of the evidence, has not demonstrated that the alien is an Outstanding Professor or Researcher under section 203(b)(1)(B) of the INA.

Authority Cite: USCIS Policy Memorandum PM-602.005.1



## Labor Certification Exemptions

### Labor certification exemptions and exceptions

In employment-based immigration, the general rule is that any alien who wants to immigrate to the United States to work must first have an “alien labor certification” approved on his or her behalf by the Department of Labor (DOL), on the basis of a labor certification application filed by a U.S. employer.

#### Form I-140, Part 2

## *Which of the following petition types is exempt from Labor Certification?*

### Part 2. Petition Type

This petition is being filed for: (Select **only one** box):

- 1.a. ☐ An alien of extraordinary ability.
- 1.b. ☐ An outstanding professor or researcher.
- 1.c. ☐ A multinational executive or manager.
- 1.d. ☐ A member of the professions holding an advanced degree or an alien of exceptional ability (who is **NOT** seeking a National Interest Waiver).
- 1.e. ☐ A professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree).
- 1.f. ☐ A skilled worker (requiring at least 2 years of specialized training or experience).

- 1.g. ☐ Any other worker (requiring less than 2 years of training or experience).
- 1.h. ☐ (Reserved)
- 1.i. ☐ An alien applying for a National Interest Waiver (who **IS** a member of the professions holding an advanced degree or an alien of exceptional ability).

Check below if this petition is being filed:

- 2.a. ☐ To amend a previously filed petition.  
Previous Petition Receipt Number:

►

- 2.b. ☐ For the Schedule A, Group I or II designation.

### First Preference (EB1) Orientation and Labor Certification Exemption

The employment-based first preference category is divided into 3 sub-categories:

1. Aliens of Extraordinary Ability in the sciences, arts, education, business, or athletics;  
Examples: Arnold Schwarzenegger (Austria), Yao Ming (China), Wayne Gretzky (Canada)
2. Outstanding Professors and Researchers  
Examples: Albert Einstein (Germany); and
3. Certain multinational executives and managers  
Example: Liz Claiborne (Belgium)

In this workshop, we will focus on the Outstanding Professor and Researcher category, although we will also provide basic information on the Extraordinary Ability category.

The basis for qualifying for lawful permanent resident (LPR) status under the Extraordinary Ability or the Outstanding Professor and Researcher categories, is proving the above-normal *ability* of the alien. A labor certification is not necessary for EB-1 first preference petitions.

## Labor Certification Exemptions

There are exceptions to the labor certification route to LPR status, though. One of the main benefits of these exceptions is of course that the DOL labor certification procedures are not required. From a resource standpoint, that can be quite important. Another benefit is processing speed. The routes to LPR outlined in this unit bypass the DOL altogether, and that can save anywhere from several months to several years of processing time in the whole LPR process.

Preference Category	Exempt?	Exceptions
1 <sup>st</sup> Preference	Yes	n/a
2 <sup>nd</sup> Preference	No	<ul style="list-style-type: none"><li>• National Interest Waiver</li><li>• Schedule A, exceptional ability in sciences or arts</li><li>• Schedule A, blanket certification for nurse and physical therapists</li></ul>
3 <sup>rd</sup> Preference	No	<ul style="list-style-type: none"><li>• Schedule A, exceptional ability in sciences or arts</li><li>• Schedule A, blanket certification for nurses and physical therapists</li></ul>
4 <sup>th</sup> Preference	Yes	n/a
5 <sup>th</sup> Preference	Yes	n/a

## EB-1 Outstanding Professor or Researcher

The outstanding professor or researcher classification is an excellent option for individuals who are outstanding in their field, but who may not have risen to the level necessary to prove extraordinary ability.

### Eligibility Checklist

- ☐ Is the beneficiary recognized internationally as outstanding in a specific academic field?
- ☐ Does the beneficiary have at least 3 yrs experience in teaching or research in the academic field?
- ☐ Does the beneficiary have a job offer from the petitioning employer for:
  - a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic field,
  - a comparable permanent position with a university or institution of higher education to conduct research in the academic field, or
  - a comparable permanent position to conduct research in the academic field with a department, division, or institute of a private employer, if the department, division, or institution employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field?

Although the sufficiency of the job offer and the task of establishing the required three years of experience can present challenges, the most common evidentiary challenge in an EB-1 Outstanding Professor or Researcher petition is establishing that the beneficiary is “internationally recognized” as being “outstanding” in “an academic field.”

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Authority Cite: INA 203(b)(1)(B) and USCIS regulations, at 8 CFR 204.5(i)



### In Practice: Outstanding Professor Case

Consider the eligibility criteria for Outstanding Professor or Researcher in relation to the case. Discuss whether the two letters provide enough support for this category.

#### Grouping:

Pairs



Bombast Knowsall has been offered a tenure-track position by the Department of Education and Child Development at Knott Realia University (KRU) as an Assistant Professor. Dr. Knowsall received his PhD in Education from the National Research University five years ago. His PhD dissertation quickly became the talk of the educational community as he introduced a novel theory on how to teach math and sciences to children in elementary

school. Some journals hailed him as a “bright young voice in the dark abyss of science” while others scoffed that he was a flash in the pan and his techniques would not work. Three progressive schools in Iceland adopted his techniques and in the four years since implementing them, have noticed a slight (2%) increase in student performance on standardized tests. Since his dissertation, he has been a postdoctoral fellow, has published two additional papers, has spoken at several national and international conferences, and has been interviewed by the local news.

KRU is eager to hire this innovative thinker and is hoping he will revitalize their department. Dr. Knowsall is Canadian and most anxious to begin work. Reader's Digest has given him a \$50,000 grant to continue his research at Knott Realia University where he will remain on payroll.

List the issues relevant to eligibility for classification as an Outstanding Professor or Researcher. Evaluate how well the two letters support a case for Outstanding Professor or Researcher classification.

## Support letter from National Research University

### **National Research University**

Dear Sir/Madame:

I am writing in support of Knott Realia University's application for Outstanding Professor status for Dr. Bombast Knowsall.

I have known Bombast since he was a student in my "Theory of Early Childhood Education" class. He was an excellent student who showed even then the promise of being a good teacher. He was a gifted student who worked hard to master the material. Since then he has continued to work hard and has excelled in his studies. He is one of the best graduate students I have ever had. His doctoral thesis gives ample evidence to his originality. He has hypothesized that children learn complex subjects better when they are engaged in the material. The techniques he has developed to do this are being tested in Iceland with some success.

Bombast is an incredibly gifted young educational theorist whose work shows great promise. He is a man of great moral character who is a pleasure to work with. His dedication is equal to none.

I urge you to approve his petition as he truly is one of the most talented postdoctoral fellows I have ever mentored.

Sincerely,

*A. B. Eurodite*

A. Better Eurodite, PhD

## Support letter from A. Moore Selective University

### **A. Moore Selective University**

Dear Sir:

I am writing in support of Knott Realia University's application for Outstanding Professor status for Dr. Bombast Knowsall, a cutting-edge theorist in early childhood education.

Currently, I am the President of the Scandinavian Association for Elementary Education. I am Chair Emeritus of the Department of Education at the University of Overachieving Academicians. I have been teaching teachers how to teach for the past thirty years and rarely have I been excited about new concepts in education as I am about Dr. Knowsall's approach.

Dr. Knowsall burst upon the educational scene with his ground-breaking doctoral thesis in which he hypothesized children will learn technical subjects better if the subject is put to music. He tested his theory in small, controlled test groups at the Knott Realia University. Amazingly the children participating in this novel experiment witnessed marked increases in test scores in mathematics and the sciences. Initially, many of us were skeptical of his methods but in the past five years, Dr. Knowsall has repeatedly proven his methods as sound. Two years ago, the Progressive School of Iceland adapted his techniques. Being on the Board of that school, I have followed this experiment closely and can say that test scores have improved over the past two years.

Essentially, Dr. Knowsall takes complicated subject matter and puts it to music. The teacher sings the lecture then the children repeat. He has been especially successful in Mathematics where his "Pi, Pi, What is Pi?" is hummed and heard in the hallways of the school. Dr. Knowsall pioneered this novel and successful technique. Dr. Knowsall has become a celebrity, being invited to numerous conferences and individual school districts to discuss his methods. He has appeared on countless television programs and written several seminal publications that are highly regarded.

Dr. Knowsall is truly recognized as a leader in the field of early childhood education. I urge you to approve his visa.

Sincerely,

*Icarus Ibsen*

Icarus Ibsen

## EB-1: Outstanding Professor and Extraordinary Ability Letters

### Sample Letter to Prospective Writers of Letters

*Here is a model of a letter that might be sent to a prospective writer of a letter in support of an Outstanding Professor or Researcher petition, to give guidance to the letter writer about what to include in their letter.*

Dr. Peter Pan  
Department of Education  
I. Deal University  
Strasse der Kapitan Hook  
Neverneverland  
The Netherlands

**RE: Dr. Bombast Knowsall's Immigrant Visa Petition**

Dear Dr. Pan:

Thank you for agreeing to write a letter in support of Knott Realia University's petition for an immigrant visa for Dr. Bombast Knowsall based on his standing as an outstanding researcher in early childhood education. This particular classification is intended for individuals who have made contributions of major significance to their field and are recognized internationally as leaders in their field.

U.S. Citizenship and Immigration Services (USCIS) views outstanding professors and researchers to be "one of the small percentage of persons who have risen to the top of their field of endeavor" in a particular field. Specifically, to qualify as an outstanding researcher in the field of early childhood education, we ask you to confirm that Dr. Knowsall satisfies some of the following USCIS criteria for the classification:

1. Has received major prizes or awards for outstanding achievement in the field.
2. Authorship of articles in professional journals.
3. Evidence of his original scientific or scholarly contributions to the academic field.
4. Membership in associations that require outstanding achievements of their members, as judged by recognized experts such as yourself.
5. Participation as the judge of the work of others either on a panel or by "peer reviewing" papers.
6. Published materials about Dr. Knowsall and his work.

A letter of support from you to the USCIS will assist greatly the Knott Realia's effort to obtain permanent residency for Dr. Knowsall. The goal of the letter is to clearly establish that Dr. Knowsall is a leader in the field of early childhood education. We must assume that the USCIS adjudicating officer reviewing this application knows nothing at all regarding this field, except for the information we provide. We must educate him/her regarding Dr. Knowsall and his field. Any specific insights you can provide are appreciated.

It is suggested that your letter be organized as follows:

- a description of your credentials, with a reference to your *curriculum vitae*, which must be attached;
- a discussion of Dr. Knowsall's original contributions of major significance to the field;
- a discussion of those factors listed above about which you are familiar which show that Dr. Knowsall satisfies some of the regulatory requirements for the classification;

- a concluding paragraph which explains why Dr. Knowsall is a “internationally recognized,” an “outstanding researcher” whose outstanding, “significant original achievements” make him a proven “leader in his field.”

The letters should be **addressed** to:

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

However, do not send the original letters directly to USCIS. **Instead, the letters should be returned to:**

Attn: Harried Adviser  
**Knott Realia University**  
123 Eurodite Way  
Suite 775  
Anywhere, MD 21201

The language used in the letters should not be too technical and should be directed at educated “civilians.” They should be written on the level of a *National Geographic* article. Additionally, the letters must clearly establish that Dr. Bombast has already made contributions of major significance to the field. The letters should be effusive regarding the importance of his contributions and their significance and his standing in the field.

Phrases such as “acclaimed researcher”, “outstanding work in...”, “pioneering efforts in...” greatly enhance the application. On the other hand, phrases which do not support this position should be avoided (i.e., “he is a promising young researcher” or “he has great potential”). Kindly remember that this classification is intended for individuals who are already recognized as leaders in their fields and not for someone who is just starting out.

Essentially, the letter should include truthful, detailed answers to the following questions:

1. Who are you and what are your qualifications?
2. What is the field?
3. Who is Dr. Bombast and what are his significant contributions to the field? Examples and explanations regarding the meaning of these contributions are helpful. Emphasis should be placed on his research and teaching.
4. What is his standing in the field? What makes him nationally or internationally renowned?

The most important thing to remember when writing the letter is that the information contained in it must be accurate and truthful.

Again, thank you for agreeing to write a letter in support of Dr. Bombast’s permanent residency petition. If you need any assistance writing the letter or would like us to edit the letter before you finalize is, please do not hesitate to contact me.

Sincerely,

Harried Adviser  
Enclosure as stated  
Cc: Dr. Bombast Knowsall

## EB-1: Extraordinary Ability



INA § 203(b)(1)(A) allows aliens to seek lawful permanent residence based on their extraordinary ability in the sciences, arts, education, business, or athletics.

Because they are exempt from the requirement of an individual labor certification and from the requirement of a specific job offer from a U.S. employer, aliens of extraordinary ability can choose between self-petitioning or having a U.S. employer petition on their behalf. In either case, the petition is filed directly with the Nebraska Service Center.

Petitioners (whether a self-petitioning alien or a petitioning employer) must establish that the alien meets the statutory and regulatory definitions of extraordinary ability. The regulations provide the following criteria for the evidence that must accompany the I-140 petition to meet this burden of proof.

### Criteria for Extraordinary Availability

At least three of the following:

- ☐ Receipt of lesser nationally or internationally recognized prizes or awards
- ☐ Membership in associations that require outstanding achievements
- ☐ Professional or major trade publications or other major media
- ☐ Participation, either individually or on a panel, as a judge of the work of others in the same or in an allied field
- ☐ Original scientific / scholarly contributions of major significance in the field
- ☐ Authorship of scholarly articles in the field, in professional or major trade publications, or other major media
- ☐ Commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales
- ☐ Display of the individual's work in the field at artistic exhibitions/showcases
- ☐ Individual has performed in a leading or role for organizations or establishments that have a distinguished reputation
- ☐ Individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field



## Sample Expert Letter for Alien of Extraordinary Ability

Here is a model of a letter in support of an alien of extraordinary ability, to give an idea of how such letters should be written. This sample can also serve as a content model for expert opinion letters for Outstanding Professor or Researcher petitions.

**National Research University**  
**Department of Obscure Tribal Studies**

April 1, 20XX

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

Re: Dr. Gnos A. Lott

Dear Mr. Novak:

I am writing in support of Knott Realia University's Extraordinary Ability permanent residency petition for Dr. Gnos A. Lott, an outstanding researcher in Esoteric Studies. Currently, I am the Chairman of the Department of Obscure Tribal Studies at the National Research University, a position I have held since XXXX. For the past three years I have been the President of the International Congress of Esoteric Scholars. I serve on the Editorial Boards of three of the most prestigious academic journals in the field, *Esoterica*, *The Journal of the Association of Esotericism*, and *Esoteric Advances* and am often featured in *Modern Esoteric Applications*, a magazine published for nonacademics interested in these matters. I have authored over 90 academic publications and book chapters and have presented at countless professional meetings and at the world's most prestigious universities. I am, therefore, well qualified to evaluate Dr. Lott's standing in the field. I have read his papers and book chapters and am quite familiar with his work and his standing in the field.

Esotericism is a little known, emerging academic discipline, or rather combination of disciplines. It is an unusual field that is often difficult to explain since it combines many of the more standard disciplines to study the knowledge, doctrines and practices that, traditionally, had been limited to a small group of people and to apply the findings to better explain modern society and culture. By nature of its exclusivity, these practices and doctrines were lost as the populations following them eventually disappeared. Fortunately, the modern-day evolution of esoteric studies seeks to reconstruct and preserve this knowledge in an attempt to better understand modern society. Esoteric scholars seek to learn how practices and doctrines of long-forgotten cultures can be used to better understand and improve modern society.

### **Original Contributions to the Field**

Dr. Lott has been a prolific, erudite contributor to the field. He earned his PhD in Anthropology from Oxford University in XXXX. His PhD dissertation focused on the tribal customs of the Whatsawhos who lived on an isolated island in the South China Sea in the early part of the first century. Since then his ground-breaking research has deepened the understanding of this tribe and has illustrated a society that established a society and culture

in a hostile, isolated environment. Dr. Lott's research showed that the Whatsawhos were a hierarchical, pseudo militaristic society who adapted a unique mixture of aquatic farming and piracy to sustain their tribe. Since the island was not conducive to an agrarian culture, the Whatsawhos developed a culture based on fishing and the farming of aquatic plants, fish and crustaceans to provide sustenance. Any needs not met by those ends were met by piracy. The Whatsawhos culture lasted for approximately three centuries before they were obliterated from history by diseases transmitted by errant merchants from other lands. Dr. Lott's research combines the disciplines of history, sociology, psychology, and anthropology to provide remarkable insight into ancient fish farming technologies. These technologies that Dr. Lott recreated through painstaking original research have been adapted by several commercial fish farms in Asia to improve their production without harm to the ecosystem.

Additionally, the Whatsawhos' marauding behaviour has provided novel insight and explanations for current social problems. The Whatsawhos did not begin as a culture that practices piracy on the high seas. Rather, they adapted their simple, peaceful, fishing culture to include piracy as their exposure to outside influence increased. Over time, they began to covet certain possessions of the seamen they encountered. Their attacks on passing ships focused on the acquisition of articles of clothing, jewels, and tools - items that would enhance the acquirer's standing in the society. Gold pieces and money meant nothing as they did not use money in their own society. Dr. Lott has shown the correlation between this behavior and the recent development of modern society.

Dr. Lott is highly regarded as a pioneer in the field of Esoteric Studies. His groundbreaking work with the Whatsawhos serves as an excellent example of Esoterica. This work is more than a mere historical account of a culture that had no written history. His research consists of anthropological excavations, historical research of primary documents (journals, travel logs, written histories of other cultures), psychological analysis, etc. His work does more than paint a historically accurate picture of a past culture, it also provides insights and innovations to this one. For this reason, he has been interviewed by many journals and magazines. No less than twelve articles have been written about his work, extolling his insights. He has been interviewed on network television where he has been asked to explain his theories. Several inner-city sociologists use his work in their efforts to work with troubled youth. He has elevated the field to an unprecedented level of academic acceptance. As the field enjoys a resurgence in popularity, more conferences on Esoterica are being organized around the world and Dr. Lott is a welcome addition to them all.

### **Prizes and Awards**

He has been awarded a U.S. and an international patent for the aqua-farming technology that he rediscovered. This aspect of his work has been featured in *Fish!*, the trade journal for commercial fish and aquatic plant farms. Marine research labs and commercial enterprises have leased his technology to improve their production of kelp, seaweed, and fish. Environmentalists extol his methods for increasing production of fish without harming the environment. Properly used, this technology could help alleviate the world's famine problems.

**Standing in the field and Review of the work of others**

Dr. Gnos A. Lott is arguably the foremost leader in the field of esoteric studies and serves as the exemplar of what scholars in the field aspire to. Esotericism covers a broad spectrum, but all agree that Dr. Lott stands at the pinnacle of the field. His lectures are always standing room only. Experienced esoteric scholars and neophytes alike flock to hear him speak. His calendar is packed with requests to lecture. He serves as a regular reviewer of articles submitted to the *Journal of the Association of Esotericism*. As editor-in-chief of *Esoterica* I have on several occasions asked Dr. Lott to write for publication the review of particular articles. Additionally, he serves on the Knott Realia University's review committee that evaluates the work of postdoctoral students, deciding on who gets awarded the degree and who does not.

**Membership in Professional Associations**

He serves on the board of Directors for the Association of Applied Esotericism. He is a member of the International Congress of Esoteric Scholars which, as a criterion of membership, requires considerable demonstrated scholarly achievement and rigorous peer review.

Clearly, Dr. Lott is a researcher of extraordinary ability in the field of esoteric studies. He is one of the few who have reached a level of sustained international acclaim. He is one of the small percentage of scholars who has risen to the top of his field of endeavor. I urge you to grant Knott Realia University's immigrant visa petition for Dr. Gnos A. Lott.

Sincerely,

Nosabe Nada, PhD

## EB-2: National Interest Waiver

### Second Preference (EB-2) Orientation

The second employment-based preference category consists of two sub-categories:

1. Aliens who are members of the professions holding advanced degrees; and
2. Aliens of exceptional ability in the sciences, arts, or business

In this workshop, we will focus on the advanced degree-holder category. The most important thing to remember about this category is the specificity of its definition: it is for “members of the professions” holding “advanced degrees.” Both of those terms are precisely defined in the regulations:

*Profession* means one of the occupations listed in section 101(a)(32) of the Immigration and Nationality Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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Authority Cite: 8 C.F.R. § 204.5(k)(2)

It is crucial to recognize that, it is not sufficient to show only that the alien qualifies. In order for USCIS to grant the petition, not only must the *alien* qualify as an advanced degree professional, but the *position itself must require* an advanced degree professional as well. A labor certification and job offer from a U.S. employer are required for EB-2 cases, unless the alien qualifies for a “National Interest Waiver” of the labor certification requirement.

The requirement of a job offer from a U.S. employer can be waived if the services of an alien that qualifies under the employment-based second preference are determined to be in the "national interest."

To qualify for lawful permanent residence in the Second Preference category, an alien must normally have an offer of permanent full-time employment from a U.S. employer as well as a labor certification from the Department of Labor.

Under National Interest Waiver (NIW) procedures, a *waiver* of those two requirements is possible, if the USCIS is persuaded that the alien’s services in the sciences, arts, professions, or business are in the *national interest* of the United States.

Since neither an offer of employment from a U.S. employer nor a labor certification are necessary, an alien may *self-petition* for classification under the employment-based Second Preference when requesting a National Interest Waiver.

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Authority Cite: INA § 203(b)(2)(B); 8 C.F.R. § 204.5(k)(4)(ii)

### **Qualifying for a National Interest Waiver**

Obtaining a National Interest Waiver is not an easy job. DHS standards for granting National Interest Waivers are extraordinarily strict. The INA permits National Interest Waivers to aliens who will provide services in the following general fields:

- The sciences
- Arts
- Professions
- Business

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Authority Cite: INA § 203(b)(2)(B)(i)

Note: Another kind of National Interest Waiver (not covered in this workshop) is also available to physicians who will work in areas designated as health care provider shortage areas and at VA hospitals.

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Authority Cite: INA § 203(b)(2)(B)(ii)

**Historical Example:** As noted above, the requirement of a specific job offer might be waived for foreign scientists brought to the U.S. to work on projects involving vital national security interests, illustrated by the case of:

- **Edward Teller** who was born in Budapest, Hungary and educated in Germany. He became an American citizen in 1941. He participated in the Manhattan project with Enrico Fermi and other top scientists in the 1940s. He was the principal architect of America's hydrogen bomb.

### **Criteria for Proving National Interest**

Since neither the INA nor DHS regulations provide useful guidance on what constitutes "national interest," standards of proof have developed through administrative case decisions.

The most recent precedent decision that the Administrative Appeals Office (AAO) and USCIS adjudicators must now follow is [Matter of Dhanasar, 26 I&N Dec. 884 \(AAO 2016\), Int. Dec. 3882 \(December 27, 2016\)](#), an AAO case decided on December 27, 2016. The general Dhanasar standard is that:

"USCIS may grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that he or she is well positioned to advance the proposed endeavor; and

(3) that, on balance, it would be beneficial to the United States to waive the job offer and labor certification requirements."

This decision vacated the prior precedent decision, Matter of NYSDOT (New York State Dept. of Transportation), 22 I&N Dec. 215 (Comm. 1998), Int. Dec. 3363 (August 7, 1998).

The well-written Dhanasar decision explains a three-prong structure. Here is the text of the decision, divided into its three prongs.

**Dhanasar  
Prong 1**

**Dhanasar Prong 1: The foreign national's proposed endeavor has both substantial merit and national importance**

"The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake."

*Substantial merit*

"The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Evidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required, as an endeavor's merit may be established without immediate or quantifiable economic impact. For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States."

*National importance*

"In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. An undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. But we do not evaluate prospective impact solely in geographic terms. Instead, we look for broader

**Dhanasar  
Prong 2**

implications. Even ventures and undertakings that have as their focus one geographic area of the United States may properly be considered to have national importance. In modifying this prong to assess "national importance" rather than

"national in scope," as used in NYSDOT, we seek to avoid overemphasis on the geographic breadth of the endeavor. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance."

**Dhanasar Prong 2: The foreign national is well positioned to advance the proposed endeavor**

"The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to:

- the individual's education, skills, knowledge and record of success in related or similar efforts;
- a model or plan for future activities;
- any progress towards achieving the proposed endeavor; and
- the interest of potential customers, users, investors, or other relevant entities or individuals."

"We recognize that forecasting feasibility or future success may present challenges to petitioners and USCIS officers, and that many innovations and entrepreneurial endeavors may ultimately fail, in whole or in part, despite an intelligent plan and competent execution. We do not, therefore, require petitioners to demonstrate that their endeavors are more likely than not to ultimately succeed. But notwithstanding this inherent uncertainty, in order to merit a national interest waiver, petitioners must establish, by a preponderance of the evidence, that they are well positioned to advance the proposed endeavor."

**Dhanasar  
Prong 3**

**Dhanasar Prong 3: On balance, it would be beneficial to the United States to waive the job offer and labor certification requirements**

"The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. On the one hand, Congress clearly sought to further the national interest by requiring job offers and labor certifications to protect the domestic labor supply. On the other hand, by creating the national interest waiver, Congress recognized that in certain cases the benefits inherent in the labor certification process can be outweighed by other factors that are also deemed to be in the national interest. Congress entrusted the Secretary to balance these interests within the context of individual national interest waiver adjudications."

"In performing this analysis, USCIS may evaluate factors such as:

- whether, in light of the nature of the foreign national's qualifications or proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification;
- whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and
- whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process.

"We emphasize that, in each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification."

"We note that this new prong, unlike the third prong of NYSDOT, does not require a showing of harm to the national interest or a comparison against U.S. workers in the petitioner's field. As stated previously, NYSDOT's third prong was especially problematic for certain petitioners,

such as entrepreneurs and self-employed individuals. This more flexible test, which can be met in a range of ways as described above, is meant to apply to a greater variety of individuals."

## **Assembling the Petition and Supporting Documents**

### **Required forms and documents**

Although the requirement for labor certification is waived, the petitioner must include Form ETA 750B in duplicate with the I-140 petition and other supporting documents.

*The national interest waiver petition package must include the following:*

- ☐ I-140, Immigrant Petition for Alien Worker
- ☐ I-140 filing fee

\* Visit [www.uscis.gov/i-140](http://www.uscis.gov/i-140) for the most up-to-date I-140 fee & form information.

- ☐ Form ETA 750-B, signed by the alien, in duplicate originals. Do not include Form ETA 750-A; only Form ETA 750-B is required
- ☐ Documentation showing eligibility for classification under the EB-2 preference category as either a holder of an advanced degree or an alien of exceptional ability
- ☐ Cover letter, referencing documentation that clearly and convincingly shows how each prong of the *Dhanasar* standard has been met

### **Evidence to support a NIW petition**

As with all petitions for permanent residence, thorough, credible, and clearly presented evidence is crucial to a national interest waiver petition's success. There is no magic formula for the assembly of a winning petition. Unlike the "outstanding" category, for which the evidence expected by DHS is well defined in the regulations, specific suggestions for evidence are not provided in the national interest waiver rules.

The lack of prescribed evidence allows the petition preparer to use discretion and creativity to highlight the importance to the national interest of the work being conducted, the exceptional ability of the beneficiary, the importance of the beneficiary to the work or project, the national scope or impact of the work or project, and the inapplicability or inappropriateness of labor certification.

Compiling an approvable petition requires a commitment to gathering the best possible materials and presenting them in the way DHS is most likely to understand them. Over-documentation with weak materials is as unlikely to succeed in this category as in any other.

The evidentiary standard to be applied to NIW petitions is the "preponderance of the evidence" standard. In general, it means that approval demands only that the evidence "more likely than not" warrants approval (see "**The preponderance of the evidence standard**" from USCIS Policy Memorandum PM-602-0005.1 for more information). However, many practitioners have noted that standards of review vary among the USCIS Service Centers.



**In Practice: Circumstance for National Interest Waivers**

The requirement of a job offer from a U.S. employer can be waived if the services of an alien that qualifies under the employment-based second preference are determined to be in the "national interest" using the Dhanasar criteria.

**Grouping:**

Table

Case Study	Is this an NIW candidate?	Which prongs?
1. Dr. Liu is a new researcher who just received his PhD diploma and does not have three years of professional experience. The scientific research being conducted by his research group may lead to break through diagnostic tools and treatments for a particular disease.		
2. Dr. Granitskaya's position is a temporary one and therefore the institution is unwilling to process employment based permanent residence on her behalf.		
3. Mr. Proal does not want to be tied to one employer and therefore wishes to retain an attorney and self-petition for permanent residence.		

# Filing the I-140 Employment-Based Immigration Petition

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## Objectives:

- ☐ Review the form I-140 and identify where information is obtained
- ☐ Use the visa bulletin to determine filing date
- ☐ Discuss the differences between consular processing and adjustment of status
- ☐ Identify filing action items and institutional policy and procedures

## Overview of Resources

Interpretation/Guidance	AM 360 13.C
Forms/Instructions	I-140 Instructions Form I-485 Form I-485 Supplement J
Websites	<a href="http://www.uscis.gov/i-140">www.uscis.gov/i-140</a>

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## DOS guidance

### DOS guidance - Cables and the Foreign Affairs Manual

The DOS “rapid-delivery” vehicle for getting interpretive guidance to its field offices is the “cable.” DOS cables are prepared by DOS headquarters staff, and sent to consular offices worldwide, after the content of the policy guidance has been approved at the necessary levels within DOS.

\*DOS posts many of its field cables on its website at: <http://foia.state.gov/Search/Search.aspx> (use search term “cable”)

The Department of State has codified its policy and interpretive guidance into a practice manual for Foreign Service Officer called the Foreign Affairs Manual. Chapter 9 of the FAM (9 FAM) deals with visa issuance. The FAM consists of sections that state the law, notes discussing interpretation of the law, procedural notes discussing actual procedures, and attachments that include reference material.

The FAM can be accessed on the DOS Web site at [www.state.gov/m/a/dir/regs/fam/](http://www.state.gov/m/a/dir/regs/fam/) and 9 FAM at [www.state.gov/m/a/dir/regs/fam/09fam/index.htm](http://www.state.gov/m/a/dir/regs/fam/09fam/index.htm)

## Filing the Form I-140

### General Filing Tips

To ensure that your Form I-140 is not rejected, make sure to submit your form with correct information and well-organized supporting documentation. Follow the general filing tips on the [Tips for Filing Forms with USCIS page](#) to ensure that USCIS will accept your Form I-140 for processing.

Additionally, here are some Form I-140 filing tips to follow:

#### General

- Use the current version of the form, which you can find at [www.uscis.gov/i-140](http://www.uscis.gov/i-140).
- File your Form I-140 at the correct address. Go to the [Direct Filing Addresses for Form I-140, Immigrant Petition for Alien Worker page](#) to determine where to file your Form I-140. USCIS sometimes [transfers workloads](#) between service centers, so be sure you file your form at the current filing address.
- Make sure the petitioner signs the Form I-140.
- If you file a Form I-140 with other related applications for the beneficiary, write the beneficiary's name on the payment document (for example, in the memo line on a check).
- Submit one check per form. If you use one check to pay for more than one petition or application and USCIS determines that you did not properly file one of the forms, they will reject ALL of the forms.
- If applicable, submit [Form G-28, Notice of Entry of Appearance as Attorney or Representative](#) with original signatures.

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Source: [www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker](http://www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker)

According to the USCIS website, the Form I-140 package should be assembled in this order:

1. Form G-28, if any, on top
2. Form I-140
3. The original labor certification
4. Other supporting documentation, including:
  - **Official academic records**, such as diplomas and transcripts, to show that the beneficiary meets any educational requirements for the position
  - **Work experience** letters from previous employers giving the name, address and title of the employer and a description of the beneficiary's experience, to show that the beneficiary meets any work experience requirements for the position
  - **Training letters** from trainers giving the name, address and title of the trainer, and a description of the training received, to show that the beneficiary meets any training requirements for the position.
  - **Financial:** Federal tax returns, audited financial statements or annual reports to show that you have the ability to pay the wage offered to the beneficiary.
  - **Labor certification validity:** If the labor certification's validity period expires on a Saturday, Sunday or legal holiday, we will accept your Form I-140 with the labor


- certification on the next business day. If you file your Form I-140 with an expired labor certification after the next business day, we will reject it.
- **Signature:** The DOL-approved labor certification must be signed by the employer, an agent/representative, and the beneficiary before submitting it with the Form I-140.
  - **Regulatory Criteria** If you are filing under the *E21, An alien of exceptional ability* visa category and you are *NOT requesting a national interest waiver* (Form I-140, Part 2. option i.), be sure to identify which of the six regulatory criteria the beneficiary is attempting to satisfy and the relevant evidence for each individual criterion.

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Source: [www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker](http://www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker)

See the NAFSA Advisers Manual 360, section 13.C.2 for more information about best practices for filing the I-140.

## Completing the Form I-140

 <b>In Practice: Completing the Form I-140</b>	
Review your assigned sections of the form and the instructions. In your group: <ul style="list-style-type: none"> <li>• <b>Where?</b> Identify where to find the information needed to complete the form.</li> <li>• <b>Who?</b> Who is responsible for finding it?</li> <li>• <b>Questions?</b> Highlight areas where the information may be unclear where further discussion is needed.</li> </ul>	<b>Grouping:</b>
	Pairs

# Page 1: Information about the Petitioner and Petition Type

 <b>Immigrant Petition for Alien Workers</b> Department of Homeland Security U.S. Citizenship and Immigration Services		<b>USCIS</b> <b>Form I-140</b> OMB No. 1615-0015 Expires 05/31/2020		
<b>For USCIS Use Only</b>	<b>Fee Stamp</b>	<b>Priority Date</b>	<b>Consulate</b>	<b>Action Block</b>
<b>Classification</b> <input type="checkbox"/> 203(b)(1)(A) Alien of Extraordinary Ability <input type="checkbox"/> 203(b)(1)(B) Outstanding Professor or Researcher <input type="checkbox"/> 203(b)(1)(C) Multinational Executive or Manager <input type="checkbox"/> 203(b)(2) Member of Professions with Advanced Degree/Exceptional Ability <input type="checkbox"/> 203(b)(3)(A)(i) Skilled Worker <input type="checkbox"/> 203(b)(3)(A)(ii) Professional <input type="checkbox"/> 203(b)(3)(A)(iii) Other Worker		<b>Certification</b> <input type="checkbox"/> National Interest Waiver (NIW) <input type="checkbox"/> Schedule A, Group I <input type="checkbox"/> Schedule A, Group II		
<b>Remarks</b> <div style="height: 20px;"></div>				
<b>To be completed by an Attorney or Accredited Representative (if any).</b> <input type="checkbox"/> <b>Select this box if Form G-28 or Form G-28I is attached.</b>		<b>Attorney State Bar Number (if applicable)</b> <div style="border: 1px solid black; width: 100px; height: 20px;"></div>		<b>Attorney or Accredited Representative USCIS Online Account Number (if any)</b> <div style="border: 1px solid black; width: 150px; height: 20px;"></div>

► **START HERE - Type or print in black ink.**

**Part 1. Information About the Person or Organization Filing This Petition**

If an individual is filing this petition, answer **Item Numbers 1.a. - 1.c.** If a company or organization is filing this petition, answer **Item Number 2.**

**1.a.** Family Name (Last Name)

**1.b.** Given Name (First Name)

**1.c.** Middle Name

**2.** Company or Organization Name

**Mailing Address** (USPS ZIP Code Lookup)

**3.a.** In Care Of Name

**3.b.** Street Number and Name

**3.c.** ☐ Apt. ☐ Ste. ☐ Flr.

**3.d.** City or Town

**3.e.** State  **3.f.** ZIP Code

**3.g.** Province

**3.h.** Postal Code

**3.i.** Country

**Other Information**

**4.** IRS Employer Identification Number (EIN) ►

**5.** U.S. Social Security Number (SSN) (if any) ►

**6.** USCIS Online Account Number (if any) ►

**Part 2. Petition Type**

This petition is being filed for (select **only one** box):

**1.a.** ☐ An alien of extraordinary ability.

**1.b.** ☐ An outstanding professor or researcher.

**1.c.** ☐ A multinational executive or manager.

**1.d.** ☐ A member of the professions holding an advanced degree or an alien of exceptional ability (who is **NOT** seeking a National Interest Waiver (NIW)).

**1.e.** ☐ A professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree).

**1.f.** ☐ A skilled worker (requiring at least two years of specialized training or experience).

**1.g.** ☐ Any other worker (requiring less than two years of training or experience).

**1.h.** ☐ An alien applying for an NIW (who **IS** a member of the professions holding an advanced degree or an alien of exceptional ability).

Form I-140 05/09/18
Page 1 of 9

## Page 2: Beneficiary Information and Processing Preferences

### Part 2. Petition Type (continued)

This petition is being filed (select **only one** box):

- 2.a. ☐ To amend a previously filed petition.

Previous Petition Receipt Number

▶

- 2.b. ☐ For the Schedule A, Group I or II designation.

### Part 3. Information About the Person for Whom You Are Filing

- 1.a. Family Name (Last Name)
- 1.b. Given Name (First Name)
- 1.c. Middle Name

#### Mailing Address

- 2.a. In Care Of Name
- 2.b. Street Number and Name
- 2.c. ☐ Apt. ☐ Ste. ☐ Flr.
- 2.d. City or Town
- 2.e. State  2.f. ZIP Code
- 2.g. Province
- 2.h. Postal Code
- 2.i. Country

#### Other Information

3. Date of Birth (mm/dd/yyyy)
4. City/Town/Village of Birth
5. State or Province of Birth

6. Country of Birth
7. Country of Citizenship or Nationality
8. Alien Registration Number (A-Number) (if any) ▶ A-
9. U.S. SSN (if any) ▶

#### Information About His or Her Last Arrival in the United States

If the person for whom you are filing is in the United States, provide the following information.

10. Date of Last Arrival (mm/dd/yyyy)
- 11.a. Form I-94 Arrival-Departure Record Number ▶
- 11.b. Expiration Date of Authorized Stay Shown on Form I-94 (mm/dd/yyyy)
- 11.c. Status on Form I-94 (for example, class of admission, or paroled, if paroled)
12. Passport Number
13. Travel Document Number
14. Country of Issuance for Passport or Travel Document
15. Expiration Date for Passport or Travel Document (mm/dd/yyyy)

### Part 4. Processing Information

Provide the following information for the person named in **Part 3**. (select **only one** box):

- 1.a. ☐ Alien will apply for a visa abroad at a U.S. Embassy or U.S. Consulate at:
- 1.b. City or Town
- 1.c. Country
- 2.a. ☐ Alien is in the United States and will apply for adjustment of status to that of lawful permanent resident.

## Page 3: Processing Information and Information about the Petitioner

### Part 4. Processing Information (continued)

- 2.b. Alien's current country of residence or, if now in the United States, last country of permanent residence abroad.

If you provided a United States address in **Part 3.**, provide the person's foreign address in **Item Numbers 3.a. - 3.f.**:

- 3.a. Street Number and Name

- 3.b. ☐ Apt. ☐ Ste. ☐ Flr.

- 3.c. City or Town

- 3.d. Province

- 3.e. Postal Code

- 3.f. Country

If the person's native alphabet is other than Roman letters, type or print the person's foreign name and address in the native alphabet in **Item Numbers 4.a. - 4.c.**:

- 4.a. Family Name (Last Name)

- 4.b. Given Name (First Name)

- 4.c. Middle Name

### Mailing Address

- 5.a. In Care Of Name

- 5.b. Street Number and Name

- 5.c. ☐ Apt. ☐ Ste. ☐ Flr.

- 5.d. City or Town

- 5.e. Province

- 5.f. Postal Code

- 5.g. Country

If you answer "Yes" to **Item Numbers 6.a. - 10.**, provide the case number, office location, date of decision, and disposition of the decision in the space provided in **Part 11. Additional Information.**

- 6.a. Are you filing any other petitions or applications with this Form I-140? ☐ Yes ☐ No

- 6.b. If you answered "Yes" to **Item Number 6.a.**, select all applicable boxes:

- ☐ Form I-485  
☐ Form I-131  
☐ Form I-765  
☐ Other (Provide an explanation in **Part 11. Additional Information.**)

7. Is the person for whom you are filing in removal proceedings? ☐ Yes ☐ No

8. Has any immigrant visa petition ever been filed by or on behalf of this person? ☐ Yes ☐ No

9. Are you filing this petition without an original labor certification because the original labor certification was previously submitted in support of another Form I-140? ☐ Yes ☐ No

10. If you are filing this petition without an original labor certification, are you requesting that U.S. Citizenship and Immigration Services (USCIS) request a duplicate labor certification from the Department of Labor (DOL)? ☐ Yes ☐ No

### Part 5. Additional Information About the Petitioner

Type of petitioner (select **only one** box):

- 1.a. ☐ Employer  
1.b. ☐ Self  
1.c. ☐ Other (For example, Lawful Permanent Resident, U.S. citizen or any other person filing on behalf of the alien)

If a company or an organization is filing this petition, provide the following information:

2. Type of Business

3. Date Established (mm/dd/yyyy)

4. Current Number of U.S. Employees

5. Gross Annual Income \$

6. Net Annual Income \$

7. NAICS Code

8. Labor Certification DOL Case Number

## Page 4: Employer and Employment Information, Dependents

### Part 5. Additional Information About the Petitioner (continued)

9. Labor Certification DOL Filing Date (mm/dd/yyyy)

10. Labor Certification Expiration Date (mm/dd/yyyy)

If an individual is filing this petition, provide the following information.

11. Occupation

12. Annual Income \$

### Part 6. Basic Information About the Proposed Employment

1. Job Title

2. SOC Code

►  -

3. Nontechnical Job Description

4. Is this a full-time position? ☐ Yes ☐ No

5. If the answer to **Item Number 4** is "No," how many hours per week for the position?

6. Is this a permanent position? ☐ Yes ☐ No

7. Is this a new position? ☐ Yes ☐ No

8. Wages (Specify hour, week, month, or year):

\$  per

### Worksite Location

For **Item Numbers 9.a. - 9.e.**, provide the address where the person will work if different from the address provided in **Part 1**.

9.a. Street Number and Name

9.b. ☐ Apt. ☐ Ste. ☐ Flr.

9.c. City or Town

9.d. State

9.e. ZIP Code

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

For **Part 7**, provide information on the spouse and all children related to the individual for whom you are filing this petition. Also, note if the individual will apply for a visa abroad or adjustment of status as the dependent of the individual for whom the petition is filed. If you need extra space to provide information about additional family members, use the space provided in **Part 11. Additional Information**.

#### Person 1

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. Date of Birth (mm/dd/yyyy)

3. Country of Birth

4. Relationship

5. Is he or she applying for adjustment of status?

☐ Yes ☐ No

6. Is he or she applying for a visa abroad?

☐ Yes ☐ No

#### Person 2

7.a. Family Name (Last Name)

7.b. Given Name (First Name)

7.c. Middle Name

8. Date of Birth (mm/dd/yyyy)

9. Country of Birth

10. Relationship

11. Is he or she applying for adjustment of status?

☐ Yes ☐ No

12. Is he or she applying for a visa abroad?

☐ Yes ☐ No



## Page 5: Dependents and Petitioner Signature

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

#### Person 3

- 13.a. Family Name (Last Name)
- 13.b. Given Name (First Name)
- 13.c. Middle Name
14. Date of Birth (mm/dd/yyyy)
15. Country of Birth
16. Relationship
17. Is he or she applying for adjustment of status?  
☐ Yes ☐ No
18. Is he or she applying for a visa abroad?  
☐ Yes ☐ No

#### Person 4

- 19.a. Family Name (Last Name)
- 19.b. Given Name (First Name)
- 19.c. Middle Name
20. Date of Birth (mm/dd/yyyy)
21. Country of Birth
22. Relationship
23. Is he or she applying for adjustment of status?  
☐ Yes ☐ No
24. Is he or she applying for a visa abroad?  
☐ Yes ☐ No

#### Person 5

- 25.a. Family Name (Last Name)
- 25.b. Given Name (First Name)
- 25.c. Middle Name
26. Date of Birth (mm/dd/yyyy)
27. Country of Birth
28. Relationship
29. Is he or she applying for adjustment of status?  
☐ Yes ☐ No
30. Is he or she applying for a visa abroad?  
☐ Yes ☐ No

#### Person 6

- 31.a. Family Name (Last Name)
- 31.b. Given Name (First Name)
- 31.c. Middle Name
32. Date of Birth (mm/dd/yyyy)
33. Country of Birth
34. Relationship
35. Is he or she applying for adjustment of status?  
☐ Yes ☐ No
36. Is he or she applying for a visa abroad?  
☐ Yes ☐ No

## Page 6: Preparer Signature and Information

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

**NOTE:** Read the **Penalties** section of the Form I-140 Instructions before completing this part.

#### *Petitioner's or Authorized Signatory's Statement*

**NOTE:** Select the box for either **Item Number 1.a. or 1.b.** If applicable, select the box for **Item Number 2.**

- 1.a. ☐ I can read and understand English, and I have read and understand every question and instruction on this petition and my answer to every question.
- 1.b. ☐ The interpreter named in **Part 9.** has read to me every question and instruction on this petition and my answer to every question in , a language in which I am fluent. I understood all of this information as interpreted.
2. ☐ At my request, the preparer named in **Part 10.**, , prepared this petition for me based only upon information I provided or authorized.

#### *Authorized Signatory's Contact Information*

- 3.a. Authorized Signatory's Family Name (Last Name)
- 3.b. Authorized Signatory's Given Name (First Name)
4. Authorized Signatory's Title
5. Authorized Signatory's Daytime Telephone Number
6. Authorized Signatory's Mobile Telephone Number (if any)
7. Authorized Signatory's Email Address (if any)

#### *Petitioner's or Authorized Signatory's Declaration and Certification*

Copies of any documents submitted are exact photocopies of unaltered, original documents, and I understand that, as the petitioner, I may be required to submit original documents to USCIS at a later date.

I authorize the release of any information from my records, or from the petitioning organization's records, to USCIS or other entities and persons where necessary to determine eligibility for the immigration benefit sought or where authorized by law. I recognize the authority of USCIS to conduct audits of this petition using publicly available open source information. I also recognize that any supporting evidence submitted in support of this petition may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews.

If filing this petition on behalf of an organization, I certify that I am authorized to do so by the organization.

I certify, under penalty of perjury, that I have reviewed this petition, I understand all of the information contained in, and submitted with, my petition, and all of this information is complete, true, and correct.

#### *Petitioner's or Authorized Signatory's Signature*

- 8.a. Petitioner's Signature

- 8.b. Date of Signature (mm/dd/yyyy)

**NOTE TO ALL PETITIONERS AND AUTHORIZED SIGNATORIES:** If you do not completely fill out this petition or fail to submit required documents listed in the Instructions, USCIS may delay a decision on or deny your petition.

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

Provide the following information about the interpreter.

#### *Interpreter's Full Name*

- 1.a. Interpreter's Family Name (Last Name)
- 1.b. Interpreter's Given Name (First Name)
2. Interpreter's Business or Organization Name (if any)

**Part 9. Interpreter's Contact Information, Certification, and Signature (continued)**

**Interpreter's Mailing Address**

- 3.a. Street Number and Name
- 3.b. ☐ Apt. ☐ Ste. ☐ Flr.
- 3.c. City or Town
- 3.d. State  3.e. ZIP Code
- 3.f. Province
- 3.g. Postal Code
- 3.h. Country

**Interpreter's Contact Information**

4. Interpreter's Daytime Telephone Number
5. Interpreter's Mobile Telephone Number
6. Interpreter's Email Address (if any)

**Interpreter's Certification**

I certify, under penalty of perjury, that:

I am fluent in English and , which is the same language specified in **Part 8., Item Number 1.b.**, and I have read to this petitioner or the authorized signatory in the identified language every question and instruction on this petition and his or her answer to every question. The petitioner or authorized signatory informed me that he or she understands every instruction, question, and answer on the petition, including the **Petitioner's or Authorized Signatory's Declaration and Certification**, and has verified the accuracy of every answer.

**Interpreter's Signature**

- 7.a. Interpreter's Signature
- 7.b. Date of Signature (mm/dd/yyyy)

**Part 10. Contact Information, Declaration, and Signature of the Person Preparing this Petition, if Other Than the Authorized Individual**

Provide the following information about the preparer.

**Preparer's Full Name**

- 1.a. Preparer's Family Name (Last Name)
- 1.b. Preparer's Given Name (First Name)
2. Preparer's Business or Organization (if any)

**Preparer's Mailing Address**

- 3.a. Street Number and Name
- 3.b. ☐ Apt. ☐ Ste. ☐ Flr.
- 3.c. City or Town
- 3.d. State  3.e. ZIP Code
- 3.f. Province
- 3.g. Postal Code
- 3.h. Country

**Preparer's Contact Information**

4. Preparer's Daytime Telephone Number
5. Preparer's Mobile Telephone Number (if any)
6. Preparer's Email Address (if any)

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**Part 10. Contact Information, Declaration, and Signature of the Person Preparing this Petition, if Other Than the Authorized Individual**  
(continued)

***Preparer's Statement***

- 7.a. ☐ I am not an attorney or accredited representative but have prepared this petition on behalf of the petitioner and with the petitioner's consent.
- 7.b. ☐ I am an attorney or accredited representative and my representation of the petitioner in this case  
☐ extends ☐ does not extend beyond the preparation of this application.

**NOTE:** If you are an attorney or accredited representative, you may need to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, or Form G-28I, Notice of Entry of Appearance as Attorney In Matters Outside the Geographical Confines of the United States, with this petition.

***Preparer's Certification***

By my signature, I certify, under penalty of perjury, that I prepared this petition at the request of the petitioner or authorized signatory. The petitioner has reviewed this completed petition, including the **Petitioner's or Authorized Signatory's Declaration and Certification**, and informed me that all of this information in the form and in the supporting documents is complete, true, and correct.

***Preparer's Signature***

8.a. Preparer's Signature

8.b. Date of Signature (mm/dd/yyyy)

If you need extra space to provide any additional information within this petition, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this petition or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

4.d.

7.d.

## Priority Dates

### Priority Dates and Waitlist



There is frequently more demand for employment-based immigrant visa slots than there is availability. A preference category can become *oversubscribed* in two ways: either the total category availability has been reached, or the per-country limit for that category has been reached.

When a category becomes oversubscribed either in its entirety or for a particular country, a waiting list develops. A person's place on the waiting list is determined by his or her "priority date," which is the date that a labor certification application was first filed on his or her behalf with the Department of Labor, or, for those categories exempt from the labor certification requirement, the date on which a preference petition was filed on his or her behalf with USCIS.

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Source: NAFSA Adviser's Manual 360

Individuals who are beneficiaries of an immigrant visa petition in one of the preference categories are each assigned a "priority date" at the start of the permanent residency application process.

**The priority date is the application or petition's date of receipt by the government, not the date it is approved**

In family-sponsored categories, the priority date is the date that the relative visa petition (Form I-130) was *received* by USCIS.

In employment-based categories this is either the date that the labor certification application (Form ETA 9089) was *received* by the Department of Labor or, in cases that do not involve labor certification, the date that the immigrant worker petition (Form I-140) was *received* by USCIS.

Remember, an individual's priority date is determined by the date the required application or petition is *received by the government*, not the date it is approved.

### The Visa Bulletin

USCIS considers several factors to determine if there is a greater supply of visas than the demand for those visas. To determine visa availability, USCIS will compare the number of visas available for the remainder of the fiscal year with:

Documentarily qualified visa applications reported by DOS;  
Pending adjustment of status applications reported by USCIS; and  
Historical drop off rate of applicants for adjustment of status (for example, denials, withdrawals and abandonments)

Two charts per preference category are posted by DOS in the Visa Bulletin around the middle of each month. One chart indicates the application final action dates, or the dates when visas may be issued. The second chart indicates the dates for filing applications, or the earliest date when

applicants can apply based on the priority date. Countries that have consistently reached their per-country limit in any category are extracted and reported separately from all other “chargeability areas.” All of this information is presented in a table format that makes it easy to find the “cut-off date” for a particular individual.

If DOS estimates that it is not likely that a preference category will be oversubscribed that month, they will mark that category “C” for “current.” If the estimate predicts that numbers are limited in a particular category or for a particular country, it will set a specific “cut-off date.”

**A person’s “chargeability area” is determined by his or her country of birth, not citizenship** An applicant can move on to the final stage of the permanent residence process (adjustment of status or consular processing) only if either the category for his or her chargeability area (usually the person’s country of birth) is marked “C” or, if a cut-off date has been established, if his or her priority date is *earlier* than the “cut-off date.” A person’s “chargeability area” is the person’s country of *birth*, not citizenship (although there are very limited circumstances that allow some individuals to choose between two or more chargeability areas).

## Reading the Visa Bulletin

The Visa Bulletin is updated monthly. Use the charts: check:

<https://www.uscis.gov/visabulletininfo>. Find the correct category in the first column, then look across to the country. That date determines the priority date. This example shows the priority dates for family-based categories.

### December 2018

Dates for Filing for Family-Sponsored Adjustment of Status Applications:

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08MAR12	08MAR12	08MAR12	22APR99	15FEB08
F2A	01DEC17	01DEC17	01DEC17	01DEC17	01DEC17
F2B	22MAR14	22MAR14	22MAR14	01AUG97	15DEC07
F3	08JAN07	08JAN07	08JAN07	08OCT99	01JUN97
F4	01FEB06	01FEB06	01JAN05	15SEP98	22APR97

Three indicators might be found in the Visa Bulletin charts:

- "C" means "current," i.e., an immigrant visa number is "currently authorized" and that applications may be filed (or approved, depending on the chart) in that category that month regardless of the applicant's priority date;
- "U" means an immigrant visa number is currently "unauthorized" for the month in question, and that no applications may be filed (or approved, depending on the chart) in that category that month;
- A specific date means that applications may be filed (or approved, depending on the chart) in that category if the prospective applicant's priority date falls before the date referenced.

Employment- Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	01JUN18	01OCT17	01JUN18	01OCT17	01JUN18	01JUN18
2nd	C	08SEP15	C	22MAY09	C	C
3rd	C	01DEC15	C	01JAN10	C	01AUG17
Other Workers	C	01JUN08	C	01JAN10	C	01AUG17
4th	C	C	01MAY16	C	C	C
Certain Religious Workers	C	C	01MAY16	C	C	C
5th Non-Regional Center (C5 and T5)	C	01OCT14	C	C	C	C
5th Regional Center (I5 and R5)	C	01OCT14	C	C	C	C

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Source retrieved 1.30.2019





### **In Practice: Reading the Visa Bulletin**

Look at each of the potential applicants and determine whether they can apply at this time.

#### **Grouping:**

Small Groups

1. How would you advise a naturalized British citizen born in India, who has a family-based 3rd preference petition approved, with a priority date of August 15, 2005?

What if she is eligible for 1st preference based on her employment at your institution?

2. What would you suggest to that individual if she tells you she has a child born in the UK, who is a UK citizen, who will turn 21 next year?

What if the soon-to-be 21-year-old child is instead a U.S. citizen?

3. How would your office handle recommendations for employment-based sponsorship for a native of Mexico who tells you he has a family-based 4th preference petition with a priority date of 7/21/1999?
4. How would you advise an employment-based 3rd preference applicant who is a naturalized Spanish citizen born in the Philippines but whose husband was born in Germany?

## Advising about Priority Dates

Some fundamental advising concepts to keep in mind:

- **Tracking Dates.** Not all scholars will be affected by or need to track their priority dates. For those who do, it is very helpful to give the individual the website for the Visa Bulletin and have him or her track the movement of their priority date for themselves.
- **Visa Cycles.** Immigrant visa availability is cyclical, i.e., it follows a pattern as the numbers move through the fiscal year. In practical terms, this means that there is little “movement” in the priority dates during the summer because all the numbers have been used. There is new availability in October of each year since that is the beginning of the fiscal year.
- **Demand vs. Availability.** Availability does not move forward on a month-by-month basis. Since availability is a function of a variety of factors, spikes in demand may occur or miscalculations must be accounted for. Occasionally availability retrogresses.
- **Visa Availability.** Since an individual cannot submit the final application for permanent residency until there is an immigrant visa available in their category, it is important for advisers to establish a “tickler” system on these dates. This allows the adviser to alert the individual a month or so in advance that he or she should begin to prepare the application materials for the final step in attaining permanent residency (I-485 packages or consular processing).

### Priority Date and Retrogression



What if the country or category has exceeded the number of visas that are available?

The alien's priority date must be current for the month in which the alien applies for adjustment or an immigrant visa at a consulate. The priority date must also be current at the time the adjustment application is approved or the immigrant visa is granted. See Unit 2 for a discussion on how an alien's priority date is determined, and how you can find the priority dates in all preference categories for the current month.

### AC21 104(c): Aliens chargeable to oversubscribed countries

Under [AC21 104\(c\)](#), an alien who is the beneficiary of an approved employment-based first, second, or third preference petition (EB-1, EB-2, or EB-3), but who cannot apply for adjustment of status solely because his or her priority date is not current due to the INA 214(g)(4) "per-country" limits on immigrant visa availability (i.e., the alien is chargeable to a country that has become "oversubscribed"), may receive H-1B status beyond six years, in increments of up to three years, until the alien's application for adjustment of status or an immigrant visa is approved or denied, or until the approval of the underlying Form I-140 is revoked.

## One-Time Protection Under Per Country Ceiling

Notwithstanding section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)), any alien who-

(1) is the beneficiary of a petition filed under section 204(a) of that Act [8 U.S.C. 1154(a)] for a preference status under paragraph (1), (2), or (3) of section 203(b) of that Act [8 U.S.C. 1153(b)]; and

(2) is eligible to be granted that status but for application of the per country limitations applicable to immigrants under those paragraphs,

may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.

USCIS regulations clarify that a three-year extension beyond six years under [AC21 104\(c\)](#) can be granted to a beneficiary "who currently maintains or previously held H-1B status."

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Authority Cite: AC21 104(c)

American Competitiveness in the 21st Century Act (AC21) section 104(c), Pub. L. 106-313  
(Oct. 17, 2000), 114 Stat. 1253, 8 USC 1184 Note.

## H-1B Considerations



What if our beneficiary is nearing the end of their H-1B visa?

## H-1B vs. EAD and Advance Parole

As an adviser, you will want to inform your scholars of the options available to them. The decision about whether or not to maintain H-1B status during the pendency of adjustment of status should be carefully considered. In cases where adjustment petitions have been concurrently filed with Form I-140, maintenance of the H-1B status provides the applicant with underlying valid status in the event that the I-140 is not ultimately approved. In addition, in cases where approval of an H-1B extension is delayed, the employer may continue to employ the applicant for an interim period of 240 days [8 CFR 274 a.12 (b)(201)]. No such interim employment authorization is available in the event that the applicant fails to receive a timely extension of the EAD on the basis of the I-485 filing.

Some will choose to remain in H-1B status, travel and work with their I-797 approval notice and a valid H-1B visa stamp in their passports. They will only be permitted to engage in work at the H-1B employer. And, when they travel, they may have to apply for renewal of the H-1B visa at

a US Consulate. Those who anticipate a security clearance before the visa is granted can expect to be stuck outside the U.S. while awaiting visa issuance.

Some scholars will choose to work and travel using their EADs and advance parole. An EAD allows the individual to work on the open market, but he/she must still have the intention of being employed at the I-140 sponsoring employer upon obtaining permanent residence. The spouse of the principal alien can also obtain an EAD to work once the adjustment application has been filed. Scholars from countries where security clearances or visa denials are common may lean toward the advance parole option. Be aware, however, that advance parolees, when entering the U.S., are often referred to secondary inspections to await an interview by an immigration official. Those who choose to travel and re-enter with advance parole need to know that this can cause them to miss closely scheduled connecting flights. On July 30, 2004, DHS published a rule in the Federal Register which “removes current regulatory language limiting EAD validity periods to one-year increments.” This means that an alien can submit Form I-765 with a cover letter requesting an EAD valid for 24 months, or longer. If granted this would eliminate the need to renew work permission each year. If renewal is necessary, the new EAD must be approved before the expiration of the prior EAD, to avoid a gap in work authorization.

After reviewing the “Cronin memo,” referenced below, you may still choose to inform your scholars to pick one set of documents and stick to it. Attempting to mix and match, traveling and working with some H-1B documents and some EAD or advance parole documents can lead to confusion, or worse, a gap in work authorization.

### **Maintaining the Current Temporary Status**

INA § 214(h) recognizes dual intent for the H-1B, and regulations permit the alien to maintain and extend H-1B status and continue to work and travel in that status while an I-485 is pending. However, if the alien obtains interim work permission based on the I-485 filing and uses that permission for open-market employment, the H-1B is terminated. In contrast, most temporary statuses, such as F and J, require, by law, that the alien have “a residence abroad that he has no intention of abandoning.” The filing of an I-485 is understood by DHS to be an expression of immigrant intent that effectively terminates the temporary status.

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Authority Cite: 8 CFR 214.2(h)(16) and 245.2(a)(4)(ii)(C); INS-HQ memo from Michael Cronin HQADJ 70/2.8.6, 2.8.12, 10, 18 AD 00-03, May 16, 2000

### **Approval, Denial, or Revocation**



#### **Lawful Permanent Residence or Not?**

Consider the myriad issues that can come as surprises when petitioning for employment-based permanent residence. Consider each of these quotes and how they might impact a potential petition.

Sometimes asking the right questions at the outset can prevent later challenges. What practices can address some of these issues.

**Family matters:**

- “You have moved since your I-140 was filed? Did you notify USCIS of your change of address on Form AR-11? Did you notify the USCIS Customer Service line?”
- “How many kids do you have all together?”
- “When is the wedding?”
- “When does that divorce become final?”

**Hidden problems:**

- “Tell me again when you had a Fulbright?”
- “What? Your new wife just told you yesterday that she had a Fulbright 5 years ago?”
- “What's this I-94? It has an expiry date of 1/2/2008. It says B-2 on it. Was this your last entry?”

**Personal problems:**

- “Specifically, what was the conviction for?”
- “I'm so sorry about the diagnosis. Active TB, huh?”

**Money problems/unauthorized employment problems:**

- “Tango? You've been teaching tango for the local dance studio all along? But you're a philosophy professor.”
- “So, can I please see your paycheck? It comes from where? When did that change? Your boss owns the little biotech spin-off? And he said it didn't matter where your paycheck comes from? It's all the same pot of money?”
- “So, what has happened to the funding on your grant?”

## Approval and Denial of I-140 Petitions

If USCIS **approves** an employment-based petition, USCIS will either:

- Forward the approval to the National Visa Center (NVC) of the Department of State if the beneficiary resides outside of the United States.
- If the Form I-140 petition indicates that the alien has filed or will file an application for adjustment of status to permanent residence (Form I-485), USCIS will retain the approved visa petition for consideration with an adjustment of status application.

If USCIS **denies** an EB-1, 2, 3, or 4 petition, it will inform the petitioner of the reasons for denial, and of the right to appeal the denial to the USCIS Administrative Appeals Office (AAO).

### Revocation of Approved I-140 Petitions



What if the applicant or petitioner wishes to withdraw a petition?

What if the employer goes out of business after the petition was approved?

An applicant or petitioner may withdraw a benefit request at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

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Authority Cite: 8 CFR 103.2(b)(6)

(3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences or, if the beneficiary or self-petitioner is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her adjustment application becomes final...

- Invalidations of the labor certification in support of the petition
- Death of petitioner or beneficiary
- Written notice of withdrawal
- Termination of petitioning employer's business less than 180 days after petition approval.

#### <180 Days

- The petition is considered revoked, **unless** an associated adjustment of status application has been pending for 180 days or more.

#### >180 Days

- The petition remains approved, and the beneficiary also retains the priority date associated with that petition.

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CFR 205.1(a)(3)(iii)

# Acquiring Lawful Permanent Residence

## Objectives:

- ☐ Discuss the next steps for a denial or approval
- ☐ Debrief complex PR situations
- ☐ Identify situations where a referral to an immigration attorney may be advised

## Overview of Resources

Statutes/Regulations	INA 204(j) INA 212 8 CFR 245
Interpretation/Guidance	AM360 13.D AC21 section 106(a)
Websites	<a href="http://www.uscis.gov/visabulletininfo">www.uscis.gov/visabulletininfo</a> <a href="http://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html">travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html</a>

## Adjustment of Status

### Eligibility for adjustment of status

The basic rules on who is eligible for adjustment appear at INA §245. They are complex. This lesson will deal with only the following basic issues:

- ☐ **Current status.** Adjustment of status based on employment requires that the alien has maintained status at all times since admission. The alien must hold a currently valid nonimmigrant status such as F-1, J-2, H-1B, O-3, etc. at the time of filing the I-485. Certain students and scholars may be considered to have maintained status if they were in violation, but were formally reinstated to status. The reinstatement may serve to cure the status violation.
- ☐ **No unauthorized employment.** Adjustment requires that the alien has not engaged in unauthorized employment at any time.

### 245(k) exception

INA 245(k) enables a person who, at the time he or she applies for adjustment of status, is present in the United States pursuant to a lawful admission, so long as subsequent to that admission he or she has not failed to maintain status or worked without authorization for more than 180 days in the aggregate. Advisers should refer employees with questions about whether they can benefit from 245(k) to a qualified immigration lawyer.

- ☐ **Preference categories and priority dates.** A visa number must be available to the alien at the time of filing the I-485.
- ☐ **Inadmissibility.** The alien must not be inadmissible under any of the grounds listed in INA 212.

## Form I-485 and Form I-485 Supplement J

Filing the I-485 requires extensive accompanying forms and documentation. A basic employment-based adjustment of status application consists of the following:

- ☐ Form I-485 (Application to Register Permanent Residence or Adjust Status) for each family member, and I-485 filing fee for each family member.
- ☐ Form I-485 Supplement J, "Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)," completed by the beneficiary and the petitioner.
  - ☐ Form I-485 Supplement J does not have to be filed when the Form I-485 and Form I-140 are filed concurrently.
  - ☐ See the Form I-485 Supplement J note below for more information.
- ☐ Biometric Fee for each family member aged 14-70 years old. USCIS will send notification of date and place for fingerprints to be taken.
- ☐ Copy of I-140 approval notice (Form I-797). If applying under I-485/I-140 concurrent filing rules 13.C.2.3 Concurrent filing of I-140 and I-485]:
  - ☐ For applicants filing a Form I-485 concurrently with a Form I-140, include the original signed Form I-140 with I-140 fee and all required I-140 supporting documentation.
  - ☐ For applicants filing a Form I-485 on the basis of a Form I-140 that has already been filed but is still pending (another form of concurrent filing), include a copy of the I-140 I-797 receipt notice.
- ☐ Form G-325A (Biographic Information) for each family member.
- ☐ Form I-864 (Affidavit of Support), notarized, completed by principal applicant for spouse and each child (attach additional documentation as described in the I-864 instructions).
- ☐ Two photos of each family member that meet USCIS specifications, with name, Social Security Number, and I-94 number written on the back in pencil.
- ☐ Copy of birth certificate for each family member with translation if not in English.
- ☐ Copy of marriage certificate with translation if not in English, for derivative spouses.
- ☐ Copy of divorce or death certificates from previous marriages with translation if not in English.
- ☐ Form I-693 "Report of Medical Examination and Vaccination Record" and Form I-693 supplement for each family member (X-ray report and serology not needed for children under the age of 14), completed and sealed by a Designated Civil Surgeon.
  - ☐ The USCIS website has a Designated Civil Surgeon Locator at: <https://my.uscis.gov/findadoctor>
  - ☐ Form I-693 will be valid for one year from the date it is submitted to USCIS and it must be submitted within one year of the immigration medical examination.
- ☐ Copy of all passports held while present in the United States (introductory and any and all stamped pages).
- ☐ Copy of both sides of Form I-94 (if issued a paper Form I-94) or electronic I-94 printout, and evidence of having maintained an uninterrupted nonimmigrant status at all times while in the United States (e.g. I-20s [F-1], DS-2019s [J-1], I-797s [H-1B and other employment-based categories], employment authorization documents, etc.).
- ☐ For individuals who have held F-1 or J-1 student status, a copy of transcripts for entire period of study in the United States.



- For prior J exchange visitors who were subject to the INA § 212(e) two-year home country physical presence requirement, a copy of the USCIS approval of a waiver of that requirement, or the letter from the Department of State (DOS) recommending a waiver.
- The application fee for adjustment of status includes the costs of employment authorization and advance parole. Form I-765 for employment authorization and Form I-131 for advance parole, both with corresponding supporting documents and additional photographs, can be filed concurrently with the Form I-485. The I-131 or I-765 can also be filed subsequent to the I-485 adjustment application instead of concurrently. In either case, no separate filing fees need to be included, since the processing fees for those benefits have already been paid with the adjustment fee.

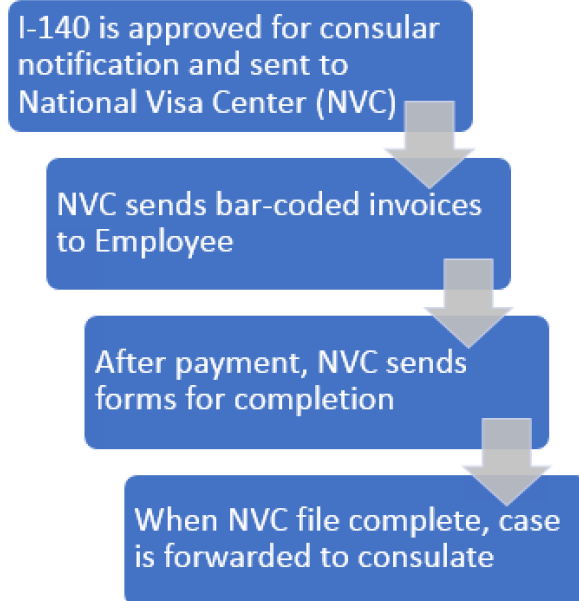
Note on Form I-485 Supplement J. Since January 17, 2017, adjustment of status applicants must use Supplement J to confirm the job offer that serves as the basis for the immigrant visa classification being sought.

- If you are concurrently filing a Form I-485 and Form I-140, you do not have to file Supplement J, since the I-140 itself is the instrument USCIS uses to confirm the job offer; However, USCIS may still ask you to submit Supplement J before adjudicating the adjustment application, especially if substantial time has passed since the concurrent I-485 and I-140 were filed.
- If you are filing a stand-alone Form I-485, you must file Supplement J at the time you file your Form I-485 to confirm that the job offered to you in the underlying Form I-140 is still bona fide and available to you.
- You must affirmatively file Supplement J to request job portability to a new, permanent job offer under INA section 204(j), along with documentation that the job offer from a new U.S. employer is in the same or a similar occupational classification as the position for which the underlying Form I-140 was filed and approved; But you cannot file Supplement J in a portability case until the Form I-485 has been pending for 180 days or more.
- You must file Supplement J any time USCIS asks you to (e.g., in an RFE or NOID), even if you've already filed one before.
- Both the I-140 petitioner and beneficiary must complete portions of Supplement J and sign the form.

## Consular Processing

### Consular Jurisdiction

Consular processing takes place at a U.S. embassy or consulate outside the United States. Usually at the time of filing the I-140, or later with the filing of an I-824, the employer, in consultation with the alien, identifies the consular post at which the alien will file for the immigrant visa. (See lesson Unit 6 re: Form I-140.) The alien must travel to a consular post that is authorized to issue immigrant visas and that will accept the case. Generally, the alien must go to an embassy or consulate in the home country. A U.S. consular post in any other country has the right to accept or refuse to accept the immigrant visa processing.



### National Visa Center (NVC) vs. Direct Filing

For consular processing to occur, the consular post must receive confirmation of the petition approval. If a consular post is specified on the I-140 or on a later I-824, USCIS will notify the NVC of the petition approval and NVC will notify the embassy or consulate.

The alien may also notify the embassy or consulate directly by sending an attorney certified copy of the I-797 approval notice of the I-140 and a full copy of the petition as filed with USCIS. Some consular posts will not accept attorney certified copies and insist on receiving the NVC notification. The alien should check before attempting to file directly.

### Campus Caveat

The I-140 petition and the approval notice belong to the employer. In order for the alien to provide an attorney certified copy, the institution may wish to establish a mechanism for their own legal counsel to issue such a certification. The certification need not be done by an immigration lawyer. Any attorney admitted to the bar in the state can do it. Generally outside immigration counsel retained by the alien will not be able to do this certification since he/she will not have seen the original documents. Some posts, however, insist on receiving the *original* I-797 petition approval notice rather than a copy. In those cases, the employer may choose to surrender it to the alien or to hold it and require that the alien use standard NVC processing.

## Forms from the NVC

Upon receipt of the I-824 or notification of consular processing, the applicant is sent a “Fee Bill Packet” which requires fee payment in advance (\$335 per visa and \$65 for affidavit of support). Five to six weeks after the Fee Bill packet has been received by the NVC, the applicant receives the “Instruction Package for Immigrant Visa Applicants” (formerly Packet 3). This package includes the DS-230 Part I. Packet 4 is now referred to as the “Appointment Package for Immigrant Visa Applicants” and includes the DS-230 Part II. These packages contain instructions and a case number to be used on all future correspondence. It typically takes three to five months from the receipt of the “Instruction Package for Immigration Visa Applicants” to the interview.

*When should these documents be included?*

The image displays three USCIS forms side-by-side. Form I-485 is titled 'Application to Register Permanent Residence or Adjust Status'. Form I-131 is titled 'Application for Travel Document'. Form I-765 is titled 'Application for Employment Authorization'. Each form has a header with the USCIS logo and title, followed by a main body with various sections for personal information, biometrics, and supporting documents. Below each form is a caption: 'Form I-485 Application to Register Permanent Residence or Adjust Status', 'Form I-131 Application for Travel Document', and 'Form I-765 Application for Employment Authorization'.

**Form I-485**  
Application to Register Permanent Residence or Adjust Status

**Form I-131**  
Application for Travel Document

**Form I-765**  
Application for Employment Authorization

## Interview and Medical Exams

The consular post will schedule or direct the alien to schedule a medical exam with an approved physician. The alien should follow those directions. The consular post will schedule one or more appointments or interviews. Some posts do the interview and the visa issuance on the same day. Others have different procedures. The alien should read instructions carefully and following those instructions.

## Processing Times

Consular processing can take as little as a few to six months from the date the consular post receives confirmation of approval of the I-140, although it could take longer.

## Employer Involvement

The employer's only involvement in consular processing is to provide a copy of the I-140 approval notice and confirm the intention to employ.

## Simultaneous Filing



Can we submit simultaneous adjustment of status and consular processing filings?

Many attorneys recommend requesting consular processing on the I-140 and changing to adjustment later if that route seems best. The choice on the I-140 must be made months in advance of the approval of the I-140 and of the processing for LPR status. If the alien chooses DOS consular processing on the I-140, he/she may switch to adjustment simply by filing the adjustment application, Form I-485, with USCIS. If the alien chooses adjustment and then decides to change to DOS consular processing he/she generally must file a Form I-824 with USCIS to have the file moved to the DOS National Visa Center (NVC) and then transferred to the appropriate consular post. That process can take a year or more.

## Institutional Strategy

Review the filing steps for the Form I-140. How do you communicate procedural steps related Form I-140?

## Portability



What if the lawful permanent resident applicant decides to work elsewhere after your institution has undergone the labor certification and petition process?

The law permits an alien to “port” or transfer employment to an employer other than the one that filed the employment-based petition, if the alien has filed for adjustment but USCIS has failed to act on the application within 180 days of filing. The law confers the benefit of the approved petition upon the alien, regardless of whether the alien remains with or returns to the employer that filed the petition.

## Grounds of Inadmissibility



What if the beneficiary informs us of a potential conflict that may render them (or a family member) inadmissible?

## Admissibility vs. Eligibility

Eligibility generally refers to whether one has the credentials and standing to receive LPR status, such as an approved petition or a clean immigration record that permits adjustment. Admissibility generally refers to past actions or characteristics of the individual that make him/her an undesirable person to be admitted to the U.S. Congress has established a list of activities or characteristics that make a person inadmissible to the United States.

## Grounds of Inadmissibility

Inadmissibility grounds cover a wide variety of activities and characteristics. Examples: criminal activity, weapons and arms dealing, drug smuggling or drug use or dealing, Nazi involvement and similar persecution of others, terrorism, Communist party affiliation, contagious diseases, professional begging, prostitution, and so on. While it seems unlikely that those in academic environments would be affected by any of these grounds, inadmissibility may be more common than one might expect. These grounds of inadmissibility appear at INA § 212.

## Form I-485 as a quick guide to inadmissibility grounds

Form I-485, Part 3 contains a review of grounds of inadmissibility in the form of questions that the alien must answer.

## Ways to Overcome Inadmissibility

Some grounds of inadmissibility may be waived or overcome depending on the facts of the case. Generally, a qualified immigration attorney needs to be involved in any such attempt.

## Common Grounds for Inadmissibility in Academic Environments

Issue	Context	Authority Cite
<b>The J two-year home country physical presence requirement</b>	The J two-year home country physical presence requirement is, by far, the most common inadmissibility ground in academics. It is also the one area in which the educational institution may be directly involved in or provide assistance in obtaining a waiver.	INA § 212(e); 22 C.F.R. § 41.62-41.63
<b>Medical grounds</b>	Persons with certain diseases or illnesses are inadmissible. These include: syphilis, tuberculosis,	INA § 212(a)(1)

Issue	Context	Authority Cite
	and certain mental illnesses. Syphilis is generally curable these days. TB is on the rise and common in some countries, but generally treatable with an extensive course of drug therapy. All persons are required to have or show evidence of having received a course of vaccinations against common infectious diseases such as mumps, measles, polio, etc. HIV is no longer on the list of medically inadmissible illnesses.	
<b>Public charge</b>	Persons who appear to be unable to support themselves and who may need government support are inadmissible. Prior use of public funds by students or scholars for subsidized housing or health care may call their public charge standing into question. The professor being paid certainly is supporting himself, but family members may have difficulties. The principal must show sufficient resources to support all family members who will immigrate with him/her. In addition, a family member who has a physical or mental illness that might permanently limit his/her ability to earn a living may need a special waiver, and the family will generally have to show sufficient resources to support the family member indefinitely.	<b>INA § 212(a)(4)</b>
<b>Criminal and drug grounds</b>	Seemingly minor problems could have major consequences in an immigration context. Examples: shop lifting, drunk driving, writing a bad check, or possession or use of a small amount of drugs. Guilty pleas equal convictions even if there is no jail time. Depending on the type of crime and whether it is a misdemeanor or a felony, it may make a person inadmissible.	<b>INA § 212(a)(2)</b>
<b>Visa fraud</b>	Persons who have lied or misrepresented facts to obtain a visa or other immigration benefits can be barred. Among students and scholars from certain countries or cultures it is not unusual and may be common for individuals to “tell the bureaucrat what the bureaucrat needs to hear to give me what I want.” They may have misrepresented certain facts such as funding to get a visa. They may have falsely claimed never to have been illegally employed in order to get F-1 OPT but may have Social Security records that indicate otherwise.	<b>INA § 212(a)(6)(C)</b>

Issue	Context	Authority Cite
<b>Unqualified physicians and uncertified health care workers</b>	Congress has passed a complex collection of legislation to control the admission of physicians and other health care workers. Most of this legislation focuses on methods of assuring that these individuals are qualified to practice their professions in the U.S. Note, though, that these rules only apply to those who are immigrating for the purpose of practicing that profession. For example, a foreign nurse who has an I-140 approved for teaching with no element of patient care need not meet the special requirements. Similarly, a foreign physician immigrating as the spouse of someone with an approved I-140 need not meet the special requirement since he/she is not immigrating for the purpose of practicing his/her profession, but rather to be with his/her spouse.	<b>INA § 212(a)(5)(B)-(C)</b>
<b>Persons unlawfully present in the United States</b>	Persons who have accrued more than 180 days but less than one year of unlawful presence in the United States are barred for three years. Those who have accrued one year or more are barred for ten years. “Unlawful presence” has not yet been defined in DHS or DOS regulations, although both of those agencies have issued written field guidance interpreting that term. Under this interim guidance, unlawful presence will begin to accrue if: 1) an individual stays beyond the expiration date on a date-specific I-94 (D/S is not date-specific, so under the current guidance those who have been admitted to the United States for “duration of status,” such as most F and J nonimmigrants, do not begin to accrue unlawful presence under this condition); 2) an individual is found by DHS or by an immigration judge to have violated their immigration status. We cannot be sure if future regulations will preserve this interim interpretation, however, and so any violation of status should be carefully avoided.	<b>INA § 212(a)(9)(B)</b>



### **In Practice: Advising Permanent Resident Issues**

Select one of the complex issues addressed on the following pages in the workbook. In your groups, discuss:

- What profile factors are important to the case?
- Why is the problem a problem? Where should you look to find a resolution?
- How does the advising help seek to resolve the issue?
- What are the implications for similar cases in the future?

#### **Grouping:**

Small Groups

#### **Topic choices:**

1. Family relationships
2. Criminal history
3. PR already in process
4. Marriage
5. Medical inadmissibility



# 1. Family Relationships

## Profile

You have received an I-140 approval for Professor Charming, an internationally known lecturer and researcher in family dynamics and interpersonal communications. His lovely wife and two children, ages 15 and 13 will be included in his LPR process. You have given him the basic information on adjustment and the issues to discuss with his immigration attorney, should he choose to consult one. You have also talked with him about consular processing. His department chair is anxious for him to get the filings done and get his LPR so that he can apply for grants in his own name and build his own research program.

## The Problem

Having had a week or so to review the I-485 information, he makes an appointment to meet with you to ask a few more questions. He appears for the meeting, comes in and closes the door, and asks to speak confidentially. Of course, your general operating procedure is to keep client discussions confidential, but this is an unusual request for this normally gregarious and outgoing soul. You prepare yourself mentally for what might follow. He begins tentatively by asking who sees the documents that go to USCIS, which forms must his family members do on their own, and which things can he do for them. Gentle questioning and assurances of confidentiality reveal:

- ☐ He has been married before. He and his first wife are citizens of and were married in a country that does not recognize divorce. They separated amicably only a year after the marriage and have had minimal contact since. She is living with her current beloved elsewhere in the U.S.
- ☐ He is not really married to the current “spouse.” They have been living together for 16 years and fell into the convenience of referring to each other as husband and wife. She is a professional in her own right and has been maintaining her own visa and keeping the children on that visa as dependents. That at least protects them from visa fraud in claiming her as a dependent on his visa.
- ☐ The current children do not know that their parents are not married.
- ☐ He wants to make sure the current family can immigrate with him.
- ☐ He has a child by the first marriage. She is now nearly 18 and in boarding school in the home country. He has kept in touch with her, though neither her mother nor his current beloved knows about this. He wants to give her derivative LPR status without making that known to the current families. Having LPR status might help her get into a U.S. college and get U.S. financial aid.

## How to Advise

First, you are not his lawyer, and he really needs a good lawyer, maybe two. The best you can do is discuss with him some of his options and prepare him to work honestly and constructively with his lawyer(s). Issues to discuss include:

- ❑ He needs to get all the family relationships settled and legal before he files the I-485s or goes for consular processing for himself and family. This may mean putting off filing for a period of time.
- ❑ He can have each member of the family do his or her own paperwork and he can be responsible for assembling all of the relevant copies of relationship certificates (birth, marriage, etc.). In that way, the children will not see most of the paperwork.
- ❑ His file at USCIS and DOS is confidential, but, in theory, an LPR applicant could file a Freedom of Information Act (FOIA) request for a copy of his/her own file in the future. Not likely, but possible. That means the spouse or child could request their own records and see all the documents related to that file.
- ❑ If his estranged wife is willing, they can probably get a divorce in the U.S. In most states, they would have long since met the separation requirements and the process would be primarily paperwork and appropriate court filings. USCIS will recognize a U.S. divorce regardless of whether it is recognized in the home country. However, he may remain forever married to the first wife under the laws of the home country. He should consider carefully how the child is treated under the terms of the divorce to ensure that he has standing to include her in the LPR petition.
- ❑ If he succeeds in obtaining a divorce in the United States, he can marry his current beloved in a very private ceremony. USCIS and DOS are interested in the legal status of the marriage, not the flowers and rice. However, marriages are public acts recorded in the appropriate public registers. If anyone gets a hint of it and wants to follow up, it would be easy to do so, especially in the hometown.
- ❑ Depending on the laws of the state or country in which they were born, he may need to adopt or otherwise legitimate the children to make them his legally. He should ask the attorney about how to do this, whether they could come under the “stepchild” rules instead, and what the relative merits of each approach might be.
- ❑ Having done all of this, he is then ready to file for LPR status with all required relationship documents and the assistance of his attorney.
- ❑ He may include the child from the former marriage since she is legally his child, though he may need the agreement of the mother if she is the custodial parent. If there is parental resistance, he should talk with the immigration and the divorce attorney about the child's legal rights of independence at the age of 18 in relation to the immigration benefit available until she turns 21.
- ❑ He should talk with the Dean/Provost/President about how these relationships could delay his LPR and thus his grant applicants, and about how his family circumstances, should they come to light, might affect his standing in the academic community. Although one normally thinks of private life being private, his field is family dynamics and interpersonal communication. He has been a little lax on the communications side, and the family dynamics could excel into overdrive.
- ❑ You might suggest that he and his family talk with religious or family counselors, get all of this out in the open, and deal with it before it hits the local news. No matter how careful he is to keep all of this confidential, he will have to be vigilant indeed.

### **In the Future**

Life goes where it goes and not much could have prevented this situation. However, he could have been better prepared earlier if he had been given early access to the I-485 and consular processing information. He could have begun thinking about this at the time he was reviewing I-140 instructions with you, not many months later when it was approved and it was time to file for LPR status. Now he has a time problem with his grants, and he must make difficult decisions and negotiate a legal minefield in a very short time.

What profile factors are important to the case?
Why is the problem a problem? Where should you look to find a resolution?
How does the advising help seek to resolve the issue?
What are the implications for similar cases in the future?

## 2. Criminal History

### Profile

Nurse Canadienne is the head nurse for your cardiac transplant unit. You have not yet filed the I-140, but nurses are Schedule A, and you know the I-140 will go pretty fast. She is also anxious to get as much as possible done as soon as possible so that her husband can work. His being out of work and their not having his income is making things tense at home. You have decided to do the I-485 review along with the I-140 review so that she can get started on everything ASAP.

### The Problem

During the discussion of fingerprints and police reports she mentions that her husband had a little trouble with the police in Canada.

She says:

"It was just a small thing. He got drunk and hit me. I got mad and called the cops. The cop tried to arrest him. He knocked the cop down and ran. They caught him at the end of the block. I didn't want to press charges but they took him in anyway."

You say:

"Well, that might be a problem, depending on the charges and whether he was convicted or sentenced. A lawyer will need to look at this case more closely to know if it will prevent him from getting a green card."

You sense that there is more to the story. You ask:

"Was there something else?"

She confides to you:

"Well there was that little shoplifting incident. You see, he was taking care of the kids and he is not used to that. He took them to the mall to pick up a new TV set. He had the two-year-old in the stroller and the four-year-old on a leash. Somehow a very shiny, very pretty, kitchen utensil (value \$1.49) got dropped into the stroller bag. He paid for the TV, but when he wheeled Miranda out the door, the alarms went off. The store has had problems with shoplifters. They believed that Alex, Jr., had probably dropped the shiny spoon in the stroller basket, but the store chain has an absolute policy of prosecuting shoplifters. They said he was responsible for his children, and once he rolled that \$1.49 spoon out the door, he had stolen it. His attorney recommended a guilty plea, full restitution of the \$1.49 to the store, court costs, no

jail time, and 50 hours of community service. That's why he has been doing all that volunteer work in the public gardens."

### **How to advise**

INA 212(a)(2) makes certain criminal convictions grounds for ineligibility for LPR status. Probably these problems can be overcome, but she and her husband need a lawyer who can investigate the details of both the Canadian and U.S. cases. "Conviction" includes either being found guilty by a jury or court or pleading guilty. Lawyers will often recommend guilty pleas for reduced sentences. In some states, state law requires that an alien be advised of the possible immigration consequences of a guilty plea. Other states have no such requirement and aliens who come before the criminal courts, and the lawyers appointed to represent them, may not know about those consequences. In general, anyone involved in a crime, no matter how small or "innocent" it seems, should consult a lawyer before filing the I-485.

### **In the Future**

No way to prevent the Canadian event, but sometimes good orientations can help with the shoplifting or similar problems. For example, the nursing population and the graduate student and young researcher population tend to have young children and shop in large stores that have good prices. Those stores often have very severe shoplifting policies. A word to the wise at new scholar orientation might have made this couple aware about the position of larger store chains regarding petty crime and more vigilant about watching the children. Just recounting this story could get the idea in their heads that systems may not work here the way they work at home.

Similar orientation issues involve

- **Child discipline.** You can spank your own kid, gently, at home, but not the neighbor's kid or one of the tyrant tykes at the day care center.
- **Spousal discipline.** You may beat a disobedient wife in your home country, but here (this state, city, etc.) police are under orders to make and arrest in all cases of domestic assault.
- **Theft and fraud.** Under your home legal system, theft may be dealt with via compensation. If you steal and you get caught you pay it back with an additional penalty. Here, theft is a crime and you get convicted and possibly sent to jail.
- **Drunk driving.** Obvious cultural and legal differences.
- **Soliciting prostitutes.** Where in the U.S. is prostitution legal, and where can that simple business transaction get you incarcerated?
- **Computer, telephone, and similar electronic fraud and crimes.** Hacking into computer systems, stealing telephone time, and so on may be federal crimes with huge, horrible penalties.

What profile factors are important to the case?
Why is the problem a problem? Where should you look to find a resolution?
How does the advising help seek to resolve the issue?
What are the implications for similar cases in the future?

### **3. PR Already in Process**

#### **Profile**

Dr. Jadan Juvejc has just accepted an offer from your university to join the faculty as an Assistant Professor of Physics. Stanford University sponsored him for H-1B status four years ago, when he was hired there. Stanford's H-1B expires on June 30 of this year. In preparation for doing an H-1B for his work at your university, you had the Physics department complete the H-1B screening forms for the ISSO. In reviewing these forms, you discover Professor Juvejc has two years left before reaching the six-year H-1B limit.

#### **The Problem**

You also discover that Professor Juvejc has answered, “yes” to the question “do you currently have an application permanent residence pending?”

#### **How to Advise**

First, you will want to know the basis for the permanent residence petition (family-based, employment-based, etc.) and how long ago it was received by the USCIS service center. You can ask Professor Juvejc that question, now that he has accepted your university's offer.

#### **Scenario 1- Family based**

If the application for adjustment of status was filed based on a family relationship, Professor Juvejc can change employers without consequence. However, he should be informed to 1) submit his change of address to the California Service Center; 2) call the national customer service line for USCIS and tell them the revised address; 3) send form AR-11 to USCIS central.

#### **Scenario 2 - Adjustment filed fewer than six months ago**

If Professor J.'s application for adjustment was filed with an employment-based permanent residence petition and was filed fewer than six months ago, it is not “portable.” In leaving his current employer, he will abandon his employment based permanent residence petition through Stanford. Your institution's first concern is going to be making sure that Professor Juvejc has permission to work when the modified annual plan begins on July 1. If he is currently in H-1B status, you will file your institution's H-1B application in advance and he will be able to work under the H-1B portability provisions. Professor Juvejc may have applied for an EAD/advance parole, or may have traveled and re-entered using the advance parole. You should ask this question. Getting Professor J. back in H status could be complicated, as USCIS does not consider parolee status to be a valid non-immigrant status and will not usually grant a change of status from parolee to H-1B.

#### **Scenario 3 - Adjustment filed more than six months ago**

If his application for adjustment of status was received by USCIS 180 days ago or more, and Professor Juvejc has a receipt from either the Nebraska or Texas Service Center, his adjustment is portable as long as “the new job is in the same or a similar occupational classification as the job for which the [I-140] petition was filed” [AC21 section 106(c)]

If he has a valid EAD and advance parole, you will need to decide whether to simply have him work using that EAD, or if you also want to put an H-1B in place as a “safety net.”

### **In the Future**

#### **What to do in future if the Service Center sends an RFE, asking for proof of continued employment at Stanford, or other documentation?**

If, in order to approve the I-140 or the I-485, the USCIS service center requests proof of continued employment at Stanford, your institution will submit evidence that the offer from your university is “a new qualifying offer of employment in a similar occupational classification” under AC21 Section 106 (c) and will enclose a copy of Section 106 (c) as backup.

What profile factors are important to the case?
Why is the problem a problem? Where should you look to find a resolution?
How does the advising help seek to resolve the issue?
What are the implications for similar cases in the future?



## **4. The Wedding Date**

### **Profile**

Dr. Grachev is a promising young scientist who has completed his PhD at the University of California at Berkeley. He has had a great postdoctoral appointment at the University of Michigan and was offered a tenure-track faculty position at your university last year. You carefully filed a special handling labor certification in January 2011, getting the approval in July 2011. Everyone was delighted. You then filed the immigrant petition (I-140) in August 2011 and are awaiting approval. Dr. Grachev is quite eager to get his green card so that he can begin acting as the principle investigator on the grant applications he is filing. He recently met a woman (Dr. Chen, a PhD researcher who has been in J-1 status for 2 years) from PR China, but Dr. Grachev is shy and hasn't confided much to you about this relationship, except to say that the relationship is serious and that they are very happy.

### **The Problem**

Dr. Grachev is ready and eager to file his I-485. If they marry before the I-485 is approved, she will be applying for her green card as the derivative spouse of an applicant for a second preference employment-based petition and will be eligible to apply to adjust her status as a spouse that is “accompanying” or “following to join” her husband. If they marry after his I-485 is approved, she will have to file as the non-derivative spouse of a legal permanent resident, a category for which there is a long waiting period. It is also the case that she is subject to 212(e), the two-year home residency requirement. Marriage to a green card holder will not cure that problem. She will have to obtain a waiver or comply with the two-year requirement before she could adjust her status to permanent resident.

### **How to Advise?**

First and foremost, it is important that the foreign scholar adviser remembers that s/he is not acting as the attorney for this potential family. It may be best to give Dr. Grachev and Dr. Chen a list of good immigration attorneys. But they will need some preliminary information in order to understand that they need to take that step. They will need to understand 212(e) and the waiver process. And they will need to understand that the wedding and filing the I-485 packages may need to happen in a particular order. This is complicated because the relationship is relatively new and they may not be ready to discuss such concrete matters. It is equally important that the foreign scholar adviser remember that s/he is not acting as a family counselor any more than she is acting as their attorney. But a little accurate information can help people avoid the pitfall of a too-early filing of the I-485. They may opt for a much later wedding date and accept the consequences of that decision, but it is important that everyone involved understand the implications of the timing decisions.

### **In the Future**

What might have helped this situation from happening? Probably not much. People lead complicated and interesting lives. They finish their degrees, get jobs, publish papers, and fall in love and get ready for marriage at their own pace and in their own time. One item that might

have helped a little would have been a timeline discussion with Dr. Grachev at the beginning of the green card process with a mention of marriage (then only a theoretical possibility). But the truth is that people can rarely hear this kind of general advice when it doesn't have clear application to their present circumstance. The best we can do is a “heads up” early in the process and tea and sympathy later.

What profile factors are important to the case?
Why is the problem a problem? Where should you look to find a resolution?
How does the advising help seek to resolve the issue?
What are the implications for similar cases in the future?

## 5. Medical Inadmissibility Grounds

### Profile

Dr. Dedicated is conducting clinical research on treatment protocols for infectious disease, specifically on the treatment of childhood tuberculosis. He is one of the hottest researchers in the field. A five million-dollar grant depends on his participation, and as soon as he has his LPR he will be getting similar grants in his own name. USCIS has received an EB-1A (Extraordinary Ability) petition for him. He currently holds H-1B status but is in his fifth year. He is ready to file the I-485.

### The Problem

You are reviewing the I-485 information, which he has had for some time and has already carefully read. He closes the door and says,

"I need to talk with you. Can I have your assurance that our conversation will be confidential?"

You agree to confidentiality outside the institution and, in so far as you are able to offer it, within the confines of the institution. He begins his story. While doing volunteer work with Doctors Without Borders last summer he was infected with tuberculosis. His chairman and a few senior staff know about this. He is on drug therapy, his current condition is quite good, and he could continue to work and be productive for years. He believes this might cause a problem with his LPR application. What can he do? You know that tuberculosis infection is a specific ground of ineligibility for LPR status written into the law at INA 212(a)(1)(A)(I). HHS specifically determined particular illnesses, such as tuberculosis or syphilis, might be a public health concern. At present, tuberculosis is a communicable disease of public health significance that can cause an applicant to be deemed inadmissible which could bar Dr. Dedicated from obtaining LPR status based on his employment alone.

### How to Advise

He will need a lawyer, but it may be the school and/or his family that solves his problem. While INA § 212(a) would make him ineligible for LPR, INA § 212(g) allows the Attorney General (AG) to waive that ground of ineligibility for spouses, children, or parents of U.S. citizens or lawful permanent residents. So start looking at relationship options. To qualify for the 212(g) waiver,

"They must be the spouse or unmarried son or daughter, or the minor unmarried lawfully adopted child of a U.S. citizen or permanent resident; or have a son or daughter who is a U.S. citizen or permanent resident. The applicant also must satisfy three discretionary criteria that were developed to ensure the public health, safety and welfare:

- The danger to the public health created by the alien's admission is minimal;

- The possibility of the spread of the infection created by the alien's admission is minimal; and
- No expense will be incurred by any government agency, without that agency's prior consent."

---

Authority Cite: July 10, 1998 INS Fact Sheet, summarizing policy set forth in INS memo HQ 212.3-P, T.A. Aleinikoff, INS Exec.Assoc.Comm. (September 6, 1995)

The H-1B will hit six years soon. If, before the expiration of the 6<sup>th</sup> year of H-1B status, 365 days have elapsed since the I-140 was filed, he may be eligible for 1-year extensions of H-1B status beyond 6 years, under AC21 § 106. If the sixth year of H-1B status expires before 365 days have elapsed since the filing of the I-140s, the AC21 exception cannot be used. You may need to look at doing a change of status to O-1. The O-1 is event-based, so you could think about defining the event as the length of the grant or the length of a long-term research project. Extending his time on the O-1 does not solve the tuberculosis problem, but it does give him time to assess whether a 212(g) waiver of inadmissibility might be possible.

### **In the Future...**

When you do the initial review of the I-485 information packet, preferably soon after you file the I-140, you can stress that you need to know if *anything* in the applicant's life changes that might relate to documentation discussed in the information packet. The sooner, the better. It is also useful to look at the entirety of an individual's life circumstances, such as places of work or residence, where TB is prevalent.

What profile factors are important to the case?
Why is the problem a problem? Where should you look to find a resolution?
How does the advising help seek to resolve the issue?
What are the implications for similar cases in the future?

## Institutional Policy and Attorney Referrals

**Campus Caveat** Anyone who believes he/she may be inadmissible should seek qualified legal counsel. Educational institutions and their staff take a tremendous risk and responsibility in attempting to advise anyone in regard to inadmissibility. The best advice is usually, “talk with a good immigration lawyer.”

*When should we refer cases to an immigration attorney rather than advise them on our own?*

## Countdown to Citizenship

Lawful Permanent  
Resident Status

≠

U.S. Citizenship

LPR status permits one to live and work in the United States and to function in most respects in the same way as a U.S. citizen, but LPR status is not the same as U.S. citizenship. Most countries allow an individual to have U.S. LPR status and still maintain citizenship in the home country. In such a case, the individual travels with the U.S. permanent resident card and the passport issued by his or her country of citizenship.

LPRs can buy and sell property, operate business, and are entitled to most constitutional protections. There are certain rights reserved for citizens:

- LPRs cannot vote,
- Cannot serve on juries, and
- Cannot hold certain elected public offices or jobs reserved for citizens for security and related reasons.

Obtaining U.S. citizenship is a different matter. If a person naturalizes in the United States, U.S. law cannot take the citizenship of another country away from that person. Retention of foreign citizenship after naturalizing in the U.S. is determined by the law of the country of foreign citizenship, not U.S. law. And so, although the United States somewhat grudgingly recognizes dual or multiple citizenships, some countries do not permit U.S. naturalized citizens to retain the citizenship of their country.

## Maintaining Lawful Permanent Resident Status

After assisting individuals to obtain permanent residence in the U.S. you may wish to provide them with information about maintaining that status as well as their rights and responsibilities.

Some advisers distribute a handout to new permanent residents, which reviews important aspects of their new status.

There are special precautions your scholars should take to preserve permanent resident status. A permanent resident card is issued for a period of 10 years, after which it must be renewed. Permanent residents must report changes of address to the USCIS on Form AR-11 within ten days of the address change. Even a U.S. lawful permanent resident can be deported under certain circumstances, including conviction for various criminal and civil offenses, aiding someone to enter the U.S. illegally, failing to notify the USCIS of a change of address or engaging in espionage, sabotage, or terrorist activities.

The most important responsibility for a U.S. lawful permanent resident is to maintain the intent to reside permanently in the United States. When a permanent resident departs the U.S., such an absence abroad should be temporary [INA 101(a)(27)(A)]. An extended absence outside the United States could result in the determination by DHS that the returning resident has abandoned his or her status as a lawful permanent resident. Departing permanent residents should apply to USCIS for re-entry permits prior to leaving the U.S. for extended absences.



### In Practice: Advising New Lawful Permanent Residents

Review the sample information handout. What information and/or additional support do you provide to lawful permanent residents?

#### Grouping:

Table

### Sample info handout for new lawful permanent residents

#### MAINTAINING PERMANENT RESIDENCE

##### Receiving your permanent resident card:

Once U.S. Citizenship and Immigration Services (USCIS) approves your adjustment of status application, you should obtain a stamp in your passport from the USCIS district office. This stamp serves as temporary evidence of your permanent resident status until the actual plastic “permanent resident card” or “green card” can be sent to you in the mail. It is called an I-551 and is valid until the date stated on the stamp, or until you receive your permanent card from the USCIS. You may use this stamp as evidence of your status as a lawful permanent resident of the United States, and for re-entry to the United States should you travel abroad and return before the expiration date of that stamp. If you have not received your permanent resident card 30 days before the I-551 stamp expires, you must contact the USCIS to obtain information about tracing your card and renewing the stamp in your passport. Your immediate

family members who applied for residency with you should also receive this I-551 stamp and then the card.

### **Limitations of Permanent Resident Status:**

A United States Permanent Resident (also known as an “immigrant” or one holding a “green card”) has most of the rights and privileges of a United States citizen, but not all of them. The plastic “green card” or “permanent resident card” itself is valid for a period of ten years, after which it must be renewed through USCIS.

A permanent resident may not vote. A permanent resident is not eligible to serve on Jury Duty. In order to be an employee of the United States government, an individual must hold United States citizenship.

There are certain criminal offenses (and maybe some civil ones) for which permanent residents can become subject to deportation and for which they would lose their permanent resident status and the “green card”.

### **Reporting address changes to USCIS**

Please note: you must notify the USCIS any time you change address, within ten days of your move. Failure to do so may affect your status. You can change your address using USCIS’ online change of address option, or by filing Form AR-11.

<http://www.uscis.gov/addresschange>

### **Applying for a Re-Entry Permit:**

If you plan to be away from the United States for more than 12 months, you should apply for a “Re-Entry Permit” prior to leaving the United States. Application should be made to the office of the Immigration and Naturalization Service having jurisdiction over your place of residence. A Re-Entry Permit is usually valid for two years and cannot be renewed. At the end of two years, if you are still resident overseas, the re-entry permit expires and you lose your permanent resident status. Only in very special circumstances can a Re-Entry Permit be extended beyond two years. For more information, download form I- 131 from the USCIS website at:

<http://www.uscis.gov/i-131>

Even short departures from the United States could result in loss of permanent residence. When you are inspected by an immigration officer upon return to the U.S., he or she may find that you have lost your permanent residence because your home is no longer in the United States. This may occur if you accept a job abroad, fail to file a United States resident income tax return, if you stay outside the United States for more than one year without a valid re-entry permit, or if you are otherwise found to have abandoned your residence in the United States. Permanent residents who are unable to return to the United States within the validity period of the permanent resident card or re-entry permit may apply to the nearest United States consular office for a special immigrant Returning Resident visa.

### **Applying for United States Citizenship**

There is normally no pressure or requirement that a permanent resident apply for United States citizenship (also known as applying for “naturalization”). However, if you wish to do so, you may apply for citizenship after five years of continuous residence in the United States. Permanent residents who are married to United States citizens may apply for citizenship after three years of continuous residence. For more information see the USCIS web page at:

<http://www.uscis.gov/naturalization>

#### **Dual Citizenship/Nationality:**

Contrary to general belief, the United States recognizes dual nationality. Dual nationality is the simultaneous possession of two citizenships. The Supreme Court of the United States has stated that dual nationality is “a status long recognized by the law,” that a person may have rights and be subject to the responsibilities for more than one country. Asserting the rights of one's citizenship does not by itself mean renouncing the **rights** of another citizenship. However, in taking the oath of allegiance to become a United States citizen, you renounce your **allegiance** to any foreign country or power. The laws of your native country may/may not allow you to retain your citizenship there after you become a United States citizen. Check with the Embassy of your home country for information on dual nationality policies.

#### **Whom to Consult?**

If you have questions or need clarification about any of the above information, you may discuss the matter with an adviser in the International Students and Scholars Office (ISSO), or consult with an attorney who specializes in immigration law. The ISSO may maintain a list of immigration lawyers in your area.



# References

Note: The workshop-to-work web resource page ([www.nafsa.org/wr-ebpr](http://www.nafsa.org/wr-ebpr)) features links to these references, as well as additional resources that may be useful.

<b>1. Pathways to Permanent Residence</b>	
Statutes/Regulations	INA 101 INA 201
Websites	<a href="http://www.uscis.gov/greencard">www.uscis.gov/greencard</a>
<b>2. Employment Based Permanent Residence</b>	
Statutes/Regulations	INA 203 8CFR 204-205 22 CFR 42.12
Interpretation/ Guidance	AM360 13.A 9 FAM 503 Adjudicator's Field Manual <a href="https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html#0-0-0-417">https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html#0-0-0-417</a>
Forms/Instructions	Visa Bulletin, most current
Websites	<a href="http://www.uscis.gov/greencard">www.uscis.gov/greencard</a>
<b>3. EB Preference System</b>	
Statutes/Regulations	INA 203(b) 8 CFR 204.5
Interpretation/ Guidance	AM360 13.B
<b>4. Alien Labor Certification</b>	
Statutes/Regulations	INA 212(a)(5)(A) 20 CFR 656
Interpretation/ Guidance	AM 12.A-12.F
Forms/Instructions	ETA 9089 Instructions ETA form 9141
Websites	<a href="http://www.doleta.gov">www.doleta.gov</a> <a href="http://www.onetonline.org">www.onetonline.org</a>
<b>5. Form I-140 Employment-Based Immigration Petition</b>	
Interpretation/ Guidance	AM 360 13.C
Forms/Instructions	I-140 Instructions Form I-485 Form I-485 Supplement J
Websites	<a href="http://www.uscis.gov/i-140">www.uscis.gov/i-140</a>

6. Acquiring Lawful Permanent Residence	
Statutes/ Regulations	INA 204(j) INA 212 8 CFR 245
Interpretation/Guidance	AM360 13.D AC21 section 106(a)
Websites	<a href="http://www.uscis.gov/visabulletininfo">www.uscis.gov/visabulletininfo</a> <a href="http://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html">travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html</a>

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# Statement of Ethical Principles

Approved by the Board of Directors, March 28, 2009



## **The Role of Ethics in International Education**

Our contemporary world is marked by increasing globalization, greater connections, and ease of movement. Knowledge and awareness of other peoples, countries, cultures and beliefs is of utmost importance. As international educators we recognize that such knowledge is fundamental to the formation of educated persons and informed citizens and, increasingly, a key to professional, business, and personal success. The acquisition of this knowledge depends, to a great extent, on high-quality programs of international education and exchange.

International educators are dedicated to providing such programs and services with the highest level of integrity and responsibility. To accomplish this, we must attend carefully and actively to the ethical obligations that emerge from our relationships with students, scholars, our institutions, international partners, and other legitimate stakeholders.

As professionals, international educators share clear and defined values. We are committed to the welfare of the students and scholars in our programs. As educators, our decisions and actions should be guided by the goal of ensuring that our programs serve identifiable and legitimate educational purposes. Working in a global and multicultural environment, we are committed to the internationalization of education, not merely as a set of experiences, but as a value-laden set of interactions that produces individuals who are more knowledgeable, reflective, broad-minded, and aware.

## **The Role and Purpose of the Statement of Ethical Principles**

We, international educators, declare our commitment to the following statement of ethical principles to:

- Aid international educators in negotiating competing responsibilities, demands, and interests as they strive to make ethical decisions in complex and multicultural environments;
- Inspire international educators to infuse all of their work with ethical principles and practices;
- Advance the development of international education as a profession and strengthen the ethical dimensions of professional outreach, research, and training;
- Aid professionals and their institutions in decision-making in the management, support, and provision of programs and services;
- Highlight the ethical obligations embedded in the relationships surrounding international education;
- Broaden and deepen conversations on ethical and professional practices in international education.

# NAFSA'S STATEMENT OF ETHICAL PRINCIPLES

<b>Integrity</b>	We will manifest the highest level of integrity in all our professional undertakings, dealing with others honestly and fairly, abiding by our commitments, and always acting in a manner that merits the trust and confidence others have placed in us.
We will follow all applicable laws and regulations and carefully and reflectively advise students and scholars regarding those laws and regulations. We will seek out appropriate guidance and advice when regulations appear contradictory, ambiguous, or confusing or when a situation is beyond our role or competency.	<b>Respect for the Law</b>
<b>Quality</b>	We will strive constantly to provide high quality and educationally valuable programs and services. We regularly will evaluate and review our work in order to improve those programs and services and will seek out and adopt exemplary practices.
We will undertake our work with the highest levels of competence and professionalism, regularly seeking and acquiring the training and knowledge necessary to do so. Our commitment to professional competence will extend to exercising thorough oversight of external programs and placements. Through careful planning and the development and implementation of appropriate policies, we will do our utmost to ensure the safety, security, and success of students, staff, faculty, and scholars.	<b>Competence</b>
<b>Diversity</b>	In both word and deed we will respect the dignity and worth of all people and be properly attentive and responsive to the beliefs and cultural commitments of others. In the planning, development, and implementation of programs and services we will engage respectfully with the diversity of peoples and perspectives. We will strive to ensure that our programs reflect the diversity of our institutions and their educational goals.
We will demonstrate the appropriate level of transparency in dealings with individuals and organizations. In collaborations with other institutions and individuals we will proceed on the bases of equality and mutuality. Transactions with external providers of programs and services will be conducted professionally, always keeping the welfare of students foremost, and disclosing any potential conflicts of interests. We will provide faculty, staff, students and scholars with the information they need to make good decisions about program participation and to facilitate their adjustment to the locales and cultures where they will study or work.	<b>Transparency</b>
<b>Access</b>	In planning, developing, and implementing our programs we will strive to ensure that they are accessible to all qualified individuals, doing our utmost to guarantee that international education is available to all who desire it and can benefit from it.
We will maintain open and readily accessible communication with individuals in our programs and services and with our institutional partners. This includes providing students with appropriate level of support based on age, experience, language ability, and placement.	<b>Responsiveness</b>
Holding these principles constantly in mind, we will work to extend and improve international education in all its forms and at all levels, including advocating for programs, policies, regulations, and laws that reflect these principles. Additionally, we will work aggressively for the realization of these principles in our personal and professional conduct, throughout our institutions, and in organizations with which we affiliate. ( <a href="http://www.nafsa.org/ethics">www.nafsa.org/ethics</a> )	

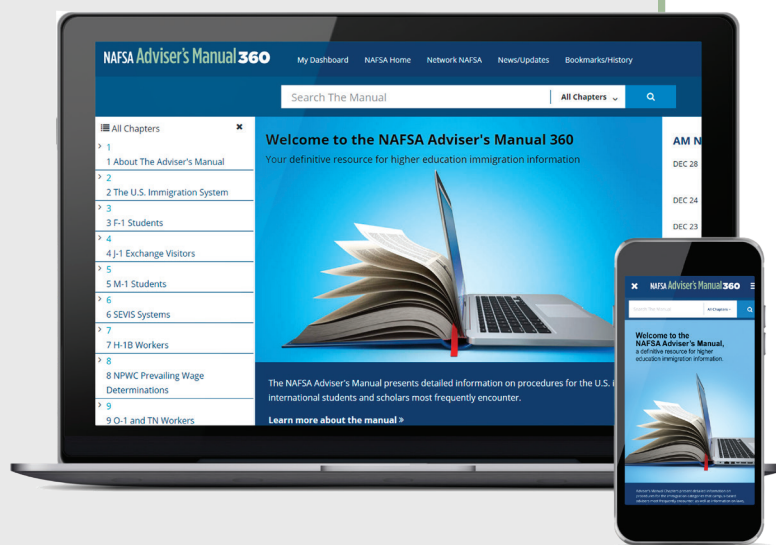
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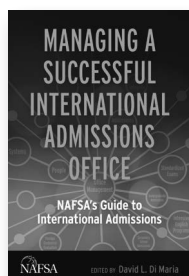
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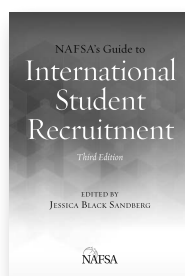
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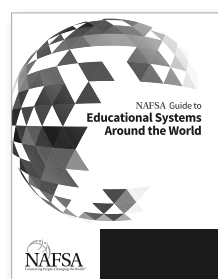
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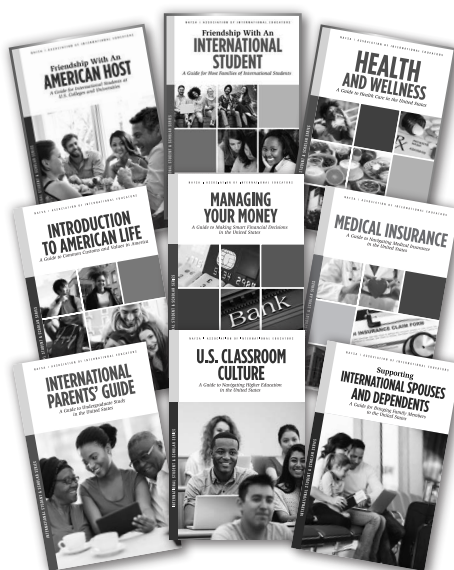


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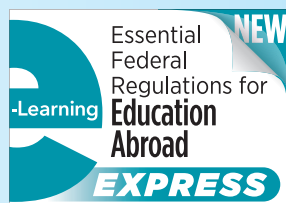
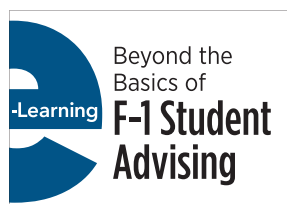
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