



# EB2-NIW

Complete Guide

Ramon Rocha

# EB-2 NIW

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Work-Based Visa

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January 2025

4th Edition (English)

# Summary

About the Author

Foreword

Legal Notice

Chapter 1: Introduction to the EB-2 NIW Visa

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

Section 1.2: Purpose of the EB-2 NIW Visa

Section 1.3: Benefits of the EB-2 NIW

1. No Employer Sponsorship Required: Unlike many other employment-based visas, the EB-2 NIW does not require a U.S. employer to sponsor the applicant. This provides full career autonomy and greater flexibility for one's professional future in the United States.

Section 1.4: The Role of the National Interest

The Matter of Dhanasar Decision

Be well positioned to advance the proposed endeavor

List of possible evidence:

Section 1.5: What does the USCIS manual say?

A. Advanced Degree Professionals

B. Exceptional Ability

Final Determination of Merit

Schedule A Permanent Work Certification, Group II

C. Professional Athletes

D. Exemption from Job Offer for National Interest

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

Chapter 2: Eligibility Criteria

Section 2.1: The First Step – EB-2 Eligibility

Section 2.2: The Second Step – Proving National Interest (NIW)

Section 2.3: Specific Cases and Strong Evidence

## Chapter 3: Preparing Your Petition

Section 3.1: Review of Eligibility Criteria

1. Demonstrating Exceptional Ability
2. Proving National Interest (the “Proposed Endeavor”)
3. Educational and Professional Background
4. Specific Cases and Adaptation

Section 3.2: Collection of Supporting Documentation

1. Identification of Relevant Documents
2. Organization and Cataloging
3. Translation and Authentication
4. Support and Reference Letters
5. Additional Field-Specific Documents
6. Comprehensive Review

Section 3.3: Creating a Professional Plan or Business Plan

Preparing a Business Plan for EB-2 NIW

Preparing a Professional Plan for EB-2 NIW

Section 3.4: Preparation of Letters of Support and Recommendation

Identification of Appropriate Recommenders

Communication of EB-2 NIW Criteria:

Detailed Guidance for Letter Writers:

Perspectives on Exceptional Ability:

Strong Argumentation for National Interest:

Advanced Collection and Coordination:

Section 3.5: Organization and Review of Documentation

1. Initial Organization:
2. Requirement Verification:
3. Checklist:
4. Content Review:
5. Consistency in Support Letters:
6. Personal Data Protection:
7. Third-Party Review:
8. Document Backup:
9. Deadlines and Submission:
10. Physical and Digital Organization:
11. List of Attached Documents:
12. Technical Guidelines for Final Assembly:

### Section 3.6: Legal Review of the Petition

### Chapter 4: Practical Aspects

### Chapter 5: Pathways to Permanent Residency

#### 5.1. Adjustment of Status

#### 5.2. Consular Processing

#### 5.3: Visa X Admission Class x Immigration Status

##### 1. Visa

##### 2. Admission Class

##### 3. Immigration Status

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

#### 5.5: Visa Bulletin and Priority Date

##### 1. Visa Bulletin:

##### 2. Priority Date:

#### 5.6: Processing Fees and Associated Costs

##### Summary of Main Fees:

## How to pay USCIS filing fees

Chapter 6: Immigration Petition (I-140)

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

Chapter 8: Work Authorization (I-765)

Chapter 9: Travel Authorization (I-131)

Chapter 10: Immigrant Visa Application (DS-260)

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

Chapter 12: Questions & Answers

Chapter 13: Final Message

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ISBN:

Fourth Edition: JANUARY 2026

Revision: 05JAN2026

## About the Author



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

Marketing in the United States.

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

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

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

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

# Foreword

Dear reader,

It is with great enthusiasm that I share this detailed guide on the EB-2- NIW (National Interest Waiver) visa process. Throughout my own immigration journey within the USA, I have lived with several situations where they required a lot of persistence, resilience, patience and overcoming. An immigration process is usually never simple or easy and requires that the petitioner, preferably, have as much knowledge as possible about the process he intends to send to U.S. immigration. And it was precisely the difficulty of finding consistent, complete and quality information that I put the pieces together and the result I present here.

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

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

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

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

With best wishes,

Ramon Rocha

# Legal Notice

The author of this guide is not an immigration attorney and does not offer legal advice. All content in this book is intended only to provide general guidance on the EB-2 visa process and should not be construed as legal advice specific to individual situations.

Readers are advised to use this guide as a resource for understanding the EB-2 immigration process and to assist in preparing their own petitions or reviewing processes made by third parties. However, if you have any questions or need that are not clear in this guide, or if you need any legal advice specific to your situation, it is recommended to consult with a licensed immigration attorney in the United States.

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

# Chapter 1: Introduction to the EB-2 NIW Visa

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

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

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

The EB-2 NIW is a special immigration visa category rooted in the need to attract and retain highly qualified professionals and outstanding entrepreneurs. Created to promote the country’s economic, scientific, and technological development, this visa was designed for individuals who demonstrate exceptional abilities in their respective fields and whose presence in the United States is considered to be in the national interest.

Over time, the recognition of the valuable contributions that highly skilled professionals and entrepreneurs can offer to the United States led to the evolution of the EB-2 NIW. Initially, the focus was on exceptional abilities in academic and scientific fields. However, as the global economy evolved and innovation became a central driver of growth, the need to adapt eligibility criteria to also include entrepreneurs and their endeavors was acknowledged.

The introduction of the National Interest Waiver category expanded opportunities for individuals who, in addition to exceptional abilities, sought to contribute to the economic growth of the United States through innovative enterprises. This development enabled talented professionals and business owners to envision a more accessible pathway to carry out their projects and contributions in the U.S., generating benefits not only for themselves but also for the American economy and society as a whole.

#### Main Aspects of the EB-2 NIW Visa:

1. **Qualification Based on Exceptional Ability:** To qualify for the EB-2 NIW, applicants must demonstrate exceptional ability in their fields of expertise, which may include the sciences, arts, education, business, or other professions. This is typically evidenced through awards, publications, patents, citations in scholarly work, peer recognition, and other relevant documentation.
2. **Contribution to the National Interest:** In addition to exceptional ability, applicants must demonstrate how their achievements and work benefit the national interest of the United States. This may include contributions to scientific, economic, cultural, educational, or other fields that have a substantial impact on the country.
3. **Waiver of Labor Certification:** One of the primary advantages of the EB-2 NIW is that applicants are not required to have an employer sponsor or a Labor Certification from the U.S. Department of Labor. This eliminates the need to prove that no qualified U.S. workers are available for the position.
4. **Petition Process:** The EB-2 NIW application process involves filing a petition with U.S. Citizenship and Immigration Services (USCIS). Applicants must prepare strong supporting documentation and a compelling narrative that highlights their achievements, skills, and contributions to the national interest.

5. **Approval and Green Card:** If the EB-2 NIW petition is approved, the applicant will receive a U.S. permanent resident card (Green Card), which grants the right to live and work indefinitely in the United States.

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

## SECTION 1.2: PURPOSE OF THE EB-2 NIW VISA

The primary objective of the EB-2 NIW visa is to allow foreign nationals with exceptional abilities in fields such as science, technology, business, medicine, education, and other areas to obtain permanent residence in the United States. The distinguishing feature of the EB-2 NIW is that it allows applicants to waive the usual requirement of a job offer and the labor certification process.

## SECTION 1.3: BENEFITS OF THE EB-2 NIW

1. **No Employer Sponsorship Required:** Unlike many other employment-based visas, the EB-2 NIW does not require a U.S. employer to sponsor the applicant. This provides full career autonomy and greater flexibility for one's professional future in the United States.
2. **Faster Processing and Premium Processing (Form I-907):** The EB-2 NIW generally offers a more efficient processing timeline compared to other employment-based immigrant visa categories. In addition, under the regulations in effect as of 2026, applicants may request Premium Processing by filing Form I-907, which guarantees an official USCIS response within up to 45 business days upon payment of the applicable

fee. Additional details and updated fees can be found on the official USCIS website.

3. **Self-Petitioning Capability:** Because the applicant acts as their own petitioner, there is no dependence on a formal job offer. This represents a crucial strategic advantage for entrepreneurs, consultants, and self-employed professionals who seek to demonstrate their national importance directly.
4. **Pathway to U.S. Citizenship:** Once permanent resident status is obtained through the EB-2 NIW, the period of residence counts toward the eligibility requirements for naturalization, allowing the individual to eventually apply for U.S. citizenship.

### SECTION 1.4: THE ROLE OF THE NATIONAL INTEREST

A fundamental concept in the EB-2 NIW is the “National Interest.” This term refers to the idea that an applicant’s skills and achievements must benefit the United States in a significant way. Such benefits may arise in various areas, including scientific research, technological advancement, economic development, healthcare, education, and many others.

The Immigration Act of 1990 states that the standards for a national interest waiver under the EB-2 category are “significantly above those required to demonstrate prospective national benefit.” However, the law does not specifically define what qualifies as National Interest. USCIS has determined that it is appropriate to leave the application of this standard as flexible as possible.

The burden of proof rests with the foreign national to establish that waiving the job offer requirement is in the national interest. Each case is adjudicated on its own merits. The wide range of cases and decisions indicates that the government requires a fairly direct benefit to the broader community before agreeing that a particular endeavor qualifies as being in the national interest. Factors that have been considered in successful cases include:

1. The admission of the foreign national will improve the U.S. economy.
2. The admission of the foreign national will improve wages and working conditions for U.S. workers.

3. The admission of the foreign national will provide more affordable housing for young people, the elderly, or low-income U.S. residents.
4. The admission of the foreign national will improve the U.S. environment and lead to a more productive use of national resources.
5. The admission of the foreign national is requested by an interested U.S. government agency.

### The Matter of Dhanasar Decision

The Administrative Appeals Office (AAO) issued a new decision—*Matter of Dhanasar*—on December 27, 2016, overturning the prior *NYSDOT* decision. In this ruling, USCIS revised the analytical framework used to evaluate eligibility for National Interest Waivers. The decision established that USCIS may now grant a National Interest Waiver if the petitioner demonstrates the following three prongs:

1. **Substantial Merit and National Importance:** The foreign national’s proposed endeavor has substantial merit and national importance.
2. **Well Positioned to Advance the Endeavor:** The foreign national is well positioned to advance the proposed endeavor.
3. **Benefit to the United States:** On balance, it would be beneficial to the United States to waive the job offer and labor certification requirements.

The merit of an endeavor may be demonstrated across a wide range of fields, including business, entrepreneurship, science, technology, culture, healthcare, or education. Evidence showing that the endeavor has the potential to generate significant economic impact may be favorable but is not required, as the merit of an endeavor can be established even without immediate or quantifiable economic impact.

**Evidence:** To support the argument that a foreign national’s work has substantial merit, it is necessary to submit documentary evidence explaining, in clear and simple terms, why the work is important and what its practical applications or benefits are for the United States. Establishing that the beneficiary’s proposed endeavor has substantial merit may include, but is not limited to:

- a. A detailed description of the proposed endeavor and why it possesses substantial merit;
- b. Documentary evidence supporting the petitioner’s claims and establishing the merit of the endeavor.

Expert recommendation letters explaining a foreign national’s research and its implications and importance to the United States are considered appropriate evidence, along with any publications or reports detailing the significance of the foreign national’s work and the benefits such work provides to the United States.

The AAO’s *Matter of Dhanasar* decision expanded the evaluative framework for determining the “national importance” of an applicant’s endeavor. When assessing whether the proposed endeavor has national importance, USCIS considers its prospective impact. This prospective impact is evaluated not only in geographic terms but also in terms of its broader implications. It is generally straightforward to demonstrate that most types of scientific research provide nationally important benefits, as scientific advancement in a particular field can reasonably be tied to a specific national objective, such as public health or national security.

Evidence that may be submitted includes documentation demonstrating that the proposed endeavor:

- a. Has national or even global implications within a particular field;
- b. Has significant potential to employ U.S. workers or otherwise generate substantial positive economic effects, particularly in economically depressed areas;
- c. Will generally enhance social welfare or contribute to cultural or artistic enrichment; and
- d. Impacts an issue that a government entity has identified as being of national importance or that is the subject of national initiatives.

Evidence: The documentation submitted must demonstrate the prospective impact potential of the proposed endeavor:

- Government-Related Agency Funding: Cases involving work funded by the U.S. government readily support a finding of national benefit.
- Citations: Demonstrate the impact and adoption of the work by other researchers across the country.

- Recommendation Letters: Provide statements explaining the national benefits and examples of implementation.

Be well positioned to advance the proposed endeavor

The second prong requires the foreign national to demonstrate that he or she is well positioned to advance the proposed endeavor. Factors considered by USCIS include, but are not limited to, the foreign national's education, skills, knowledge, and record of success in related or similar endeavors; a model or plan for future activities; any progress made toward achieving the proposed endeavor; and the interest of potential clients, users, investors, or other relevant entities or individuals.

List of possible evidence:

- A. Publications and Citation Records: A comprehensive publication record accompanied by citation evidence to demonstrate the influence of the foreign national's work in the field. Journal impact factors and average citation metrics may be used.
- B. Recommendation Letters: A crucial component. Independent letters (from individuals who have never worked directly with the applicant) carry significantly greater weight. These letters should discuss the applicant's contributions in lay terms and explain the benefits to the United States.
- C. U.S. Government Funding or Grants: Support from institutions such as the U.S. military, the National Institutes of Health (NIH), NASA, and similar agencies.
- D. Memberships: Membership in professional associations that require exceptional achievements as selective criteria.
- E. Awards: Ideally granted specifically to the foreign national and recognized at the national or international level.
- F. Nationally Published Media Coverage: Media coverage focusing on the foreign national or the work performed.

- G. Patents, Contracts, Licenses, and Technology Transfers: Evidence demonstrating the implementation of the work by U.S. industry.
- H. Third-Party Evidence: Documentation showing that the work has been requested or utilized by other researchers or institutions.
- I. Leading or Critical Role: Evidence demonstrating that the foreign national has performed an essential or indispensable role in the proposed endeavor.

## SECTION 1.5: WHAT DOES THE USCIS MANUAL SAY?

### A. Advanced Degree Professionals

1. Eligibility: The beneficiary must be a member of the professions holding an advanced degree or a foreign equivalent degree. The position being certified must require, at a minimum, such a degree. The beneficiary must have met these requirements at the time of filing.
2. Equivalent Foreign Degrees: An advanced degree is any U.S. academic degree above a bachelor's degree. A U.S. bachelor's degree (or foreign equivalent) followed by at least five years of progressive experience in the specialty is considered equivalent to a master's degree.
3. Position Requiring an Advanced Degree: Mere possession of the degree is not sufficient; it must be demonstrated that the position and the industry normally require such a degree. Example from the USCIS Policy Manual: Registered Nurses generally do not qualify as advanced degree professionals unless the position is managerial or at an advanced practice level (such as a clinical specialist), as reflected in the O\*NET system.

### B. Exceptional Ability

1. Eligibility: Expertise that is significantly above what is ordinarily encountered in the sciences, arts, or business. This standard is lower than that required for "Extraordinary Ability" under the EB-1 category.

2. Evidence (Two-Step Evaluation):

- Step 1: Determine whether the evidence satisfies at least three of the six regulatory criteria:
  1. An official academic record showing a degree, diploma, or certificate in the field;
  2. Letters documenting at least ten years of full-time experience in the occupation;
  3. A license to practice the profession or professional certification;
  4. Evidence of a salary or remuneration that demonstrates exceptional ability;
  5. Membership in professional associations;
  6. Recognition for achievements and significant contributions to the industry.
- Step 2 (Final Merits Determination): An evaluation of the quality of the evidence and whether, when considering the petition as a whole, the petitioner has demonstrated expertise that is significantly above the norm.

Final Determination of Merit

Meeting the minimum requirement by submitting at least three types of initial evidence does not, by itself, establish that the beneficiary qualifies for the exceptional ability classification. Adjudicating officers must also consider the quality of the evidence. In the second part of the analysis, officers are required to evaluate the evidence collectively, considering the petition as a whole, in order to make the final merits determination. The officer must determine whether the petitioner has demonstrated, by a preponderance of the evidence, that the beneficiary possesses a level of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

When requesting additional evidence or issuing a denial, if the officer determines that the petitioner has not met this requirement, the officer must do more than make general assertions of failure. Instead, the officer must articulate the specific reasons for concluding that the petitioner, by a preponderance of the evidence, has not demonstrated that the beneficiary qualifies for the exceptional ability classification.

The petitioner must establish that the beneficiary stands above others in the field; qualifications commonly held by most members of a given field cannot, by themselves, demonstrate a level of expertise significantly above the norm. Mere possession of a degree, certificate, or similar award from a college, university, school, or other educational institution is not, in itself, sufficient evidence of exceptional ability.

Furthermore, formal recognition in the form of certificates and other contemporaneous documentation tied to the beneficiary's claimed contributions and achievements may carry greater weight than letters prepared specifically for the petition acknowledging the beneficiary's accomplishments. As with all adjudications, if an officer determines that the facts stated in the petition are not credible and can articulate a basis for denial, the officer will deny the petition and explain the reasons in the written decision.

### Schedule A Permanent Work Certification, Group II

The permanent labor certification under Schedule A, Group II, for individuals of "exceptional ability in the sciences or arts" is distinct from the classification as an individual of "exceptional ability in the sciences, arts, professions, or business." Under U.S. Department of Labor (DOL) regulations, an employer seeking permanent labor certification on behalf of an individual of "exceptional ability in the sciences or arts" may apply directly to USCIS for Schedule A, Group II permanent labor certification, rather than filing an application with the DOL for the issuance of a permanent labor certification.

### C. Professional Athletes

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

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

### Definition of Professional Athlete

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

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

### Validity of the Permanent Labor Certification

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

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

## 2. Evidence

As with all petitions for individuals of exceptional ability, the petitioner must submit, as initial evidence, documentation demonstrating that the beneficiary qualifies for the exceptional ability classification, as specified in the regulations. However, the submission of evidence that satisfies the three required regulatory criteria does not necessarily establish that the beneficiary qualifies for the classification. An adjudicating officer must evaluate the quality of the evidence, in addition to the quantity submitted, to determine whether

the petitioner has met the burden of establishing that the beneficiary qualifies for the classification.

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

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

Many athletes, for example, receive substantial signing bonuses but may later fail to prove that they are “major league” caliber, let alone of exceptional ability. Similarly, the fact that a beneficiary has played for part of a season on a major league team does not automatically establish that the beneficiary will continue to perform at a level of exceptional ability. It would be inappropriate to approve an immigrant visa petition on behalf of a major league player based on exceptional ability if it is unlikely that the beneficiary will continue to perform the duties specified in the underlying petition for a reasonable period after the approval of lawful permanent resident status.

Furthermore, the beneficiary may be removed from a major league roster, may announce permanent retirement from the sport, or may suffer a career-ending injury prior to the adjudication of the petition, thereby eliminating the job offer that formed the basis of the petition, which would result in a denial of the petition.

#### D. Exemption from Job Offer for National Interest

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

holding advanced degrees and individuals of exceptional ability. This waiver of the job offer requirement is known as the National Interest Waiver (NIW).

A petition filed with a request for a national interest waiver on behalf of an individual does not need to be supported by a job offer; therefore, the individual may self-petition. The waiver of the job offer requirement also includes a waiver of the permanent labor certification requirement. In support of the petition, however, the petitioner must submit the specific employee-related portions of a permanent labor certification application (without Department of Labor approval). The petitioner may submit Form ETA 750B or Form ETA 9089. To establish eligibility, the petitioner bears the burden of demonstrating that:

- The individual qualifies as a member of the professions holding an advanced degree or as a person of exceptional ability; and
- Waiving the job offer requirement, and therefore the labor certification requirement, is in the “national interest.”

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

Specifically, in the context of exceptional ability, the INA requires that all petitions for an individual of exceptional ability demonstrate that the individual’s presence in the United States will substantially benefit the national economy, cultural or educational interests, or the welfare of the United States in the future. Even if the petitioner demonstrates such exceptional ability, when seeking a job offer waiver the petitioner must also establish the additional requirement of national interest. Neither the INA nor the regulations define the term “national interest.”

The burden rests with the petitioner to establish that waiving the job offer requirement is in the national interest. USCIS evaluates each petition on a case-by-case basis.

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

- The proposed endeavor has substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, it would be beneficial to the United States to waive the job offer requirement and, therefore, the permanent labor certification requirement.

Section 1 below provides an overview of the three prongs of the analysis; Section 2 provides specific guidance for individuals with advanced degrees in science, technology, engineering, or mathematics (STEM); Section 3 addresses support letters and other evidence from interested government agencies and quasi-governmental entities; and Section 4 is specific to entrepreneurs.

When an officer denies a petition because the petitioner has not demonstrated that granting the waiver is in the national interest, the decision must include information regarding appeal rights and the opportunity to file a motion to reopen or reconsider.

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

#### First Prong: The Proposed Endeavor Has Substantial Merit and National Importance

When reviewing the proposed endeavor, officers determine whether the evidence demonstrates, by a preponderance of the evidence, that the proposed endeavor has substantial merit and national importance. The term “endeavor” is more specific than the occupation in general; the petitioner must provide details not only about what the occupation typically involves, but also about the specific work the individual proposes to undertake within that occupation. For example, while engineering is an occupation, the explanation

of the proposed endeavor should describe the specific projects, objectives, or areas of engineering in which the individual will work, rather than simply listing the general duties and responsibilities of an engineer.

The merit of an endeavor may be demonstrated in areas including, but not limited to, business, entrepreneurship, science, technology, culture, health, or education.

Officers may also consider evidence of the endeavor’s potential for significant economic impact; however, “merit may be established without immediate or quantifiable economic impact,” and “activities related to research, pure science, and the advancement of human knowledge may qualify, regardless of whether the potential accomplishments in those fields translate into economic benefits for the United States.”

Officers must also examine the national importance of the specific proposed endeavor, considering its prospective impact. The focus should be on the nature of the endeavor itself, rather than solely on its geographic scope.

For example, an endeavor “may have national importance because it has national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances.” Economically, it may have “significant potential to employ U.S. workers” or generate “other substantial positive economic effects, particularly in an economically depressed area.” Accordingly, petitioners should submit a detailed description of the proposed endeavor and supporting documentary evidence to establish that the endeavor is of national importance.

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

Ultimately, if the evidence demonstrates that the individual's proposed endeavor has significant potential to broadly enhance societal welfare, cultural or artistic enrichment, or contribute to the advancement of a valuable technology or field of study, it may satisfy the national importance requirement.

### Second Prong: The Individual Is Well Positioned to Advance the Proposed Endeavor

Unlike the first prong, which focuses on the merit and importance of the proposed endeavor, the second prong focuses on the individual. Specifically, the petitioner must demonstrate that the individual is well positioned to advance the proposed endeavor.

In evaluating whether the individual is well positioned, USCIS considers 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 the individual has developed, or played a significant role in developing, for future activities related to the proposed endeavor;
- Any progress made toward achieving the proposed endeavor; and
- The interest or support obtained from potential customers, users, investors, or other relevant entities or individuals.

The petitioner should submit evidence documenting the individual's past achievements and corroborating projections related to the proposed endeavor, demonstrating that the individual is well positioned to advance it. An individual may be well positioned even if it cannot be shown that the endeavor is more likely than not to ultimately succeed. However, unsupported or implausible claims will not satisfy the petitioner's burden of proof.

The following is a non-exhaustive list of evidence that may demonstrate that an individual is well positioned to advance a proposed endeavor. This list is not intended as a checklist, nor does it indicate that any particular type of evidence is required or sufficient on its own.

Such evidence may include, but is not limited to:

- Degrees, certificates, or licenses in the field;
- Patents, trademarks, or copyrights developed by the individual;
- Letters from experts in the individual’s field describing past achievements and providing specific examples of how the individual is well positioned to advance the proposed endeavor;
- Published articles or media reports about the individual’s achievements or current work;
- Documentation demonstrating a strong citation record or excerpts from published articles showing positive discourse or adoption of the individual’s work;
- Evidence that the individual’s work has influenced the field;
- A plan describing how the individual intends to continue the proposed work in the United States;
- A detailed business plan or other description, along with relevant supporting evidence, where appropriate;
- Correspondence from employers, clients, or prospective clients;
- Documentation reflecting viable plans for financial support;
- Evidence that the individual has received investment from U.S. investors, such as venture capital firms, angel investors, or startup accelerators, in amounts appropriate to the endeavor;
- Copies of contracts, agreements, or licenses showing the potential impact of the proposed endeavor;
- Letters from U.S. government agencies or quasi-governmental entities demonstrating that the individual is well positioned to advance the proposed endeavor;
- Evidence of awards, grants, or other forms of relevant non-monetary support from federal, state, or local government entities with expertise in economic development, research and development, or job creation; and
- Evidence demonstrating how the individual’s work is being used by others, including, but not limited to:
  - Contracts with companies using products developed through the individual’s work;
  - Documentation showing technology invented or co-invented by the individual and how others use that technology; and

- Patents or licenses for innovations developed by the individual, with documentation explaining their significance to the field.

In each case, officers must consider the totality of the circumstances to determine whether the preponderance of the evidence establishes that the individual is well positioned to advance the proposed endeavor.

**Third Prong: On Balance, It Would Be Beneficial to the United States to Waive the Job Offer and Permanent Labor Certification Requirements**

Once officers determine that the petitioner has satisfied the first two prongs, they proceed to analyze the third prong. This prong requires the petitioner to demonstrate that the factors in favor of granting the waiver outweigh those supporting the requirement of a job offer and, therefore, labor certification. This ensures that the admission of foreign workers does not adversely affect job opportunities, wages, or working conditions for U.S. workers.

While Congress sought to promote the national interest by requiring job offers and labor certifications to protect U.S. workers, it also recognized that, in certain situations, the national interest is better served by waiving these requirements. In such cases, a national interest waiver outweighs the inherent benefits of the labor certification process, which primarily focuses on a geographically limited labor market. In national interest waiver adjudications, Congress vested discretion in the Secretary of Homeland Security to balance these interests.

Accordingly, for the third prong, an officer evaluates whether the proposed endeavor and the individual's ability to advance it together provide benefits to the nation such that waiving the labor certification requirement outweighs the benefits that normally flow from that requirement. For example, in the case of an entrepreneur who is self-employed in a manner that generally does not adversely affect U.S. workers, or who establishes or owns a business that creates jobs for U.S. workers, there may be little benefit to requiring labor certification.

In establishing eligibility for the third prong, petitioners may submit evidence related to one or more of the following factors, as outlined in Matter of Dhanasar:

- The impracticality of obtaining a labor certification;
- The benefit to the United States of the individual's prospective contributions, even if U.S. workers are also available; and
- The national interest in the individual's contributions being sufficiently urgent, such as in maintaining U.S. competitiveness in STEM fields.

Additional considerations may include:

- Whether urgency, such as public health or safety concerns, justifies waiving the labor certification process;
- Whether the labor certification process would prevent an employer from hiring an individual with unique knowledge or skills that exceed the minimum requirements of the occupation and cannot be adequately captured through labor certification;
- Whether the proposed endeavor has the potential to generate substantial, consistent revenue, such as through economic revitalization; and
- Whether the proposed endeavor may lead to job creation.

## 2. Specific Evidentiary Considerations for Individuals with Master's or Doctoral Degrees in STEM

There are specific evidentiary considerations related to STEM degrees and fields, although the analytical framework remains the same regardless of the endeavor. USCIS recognizes the importance of progress in STEM fields and the essential role of individuals with advanced STEM degrees in fostering that progress, particularly in critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security.

To identify critical and emerging technology areas, officers consider governmental, academic, and other authoritative sources, as well as all other evidence submitted by the petitioner. Lists published by the Executive Office of the President, the National Science and Technology Council, or the National

Security Council are examples of authoritative sources. Officers may consider a STEM area important to competitiveness or security where the evidence demonstrates that an endeavor will help the United States remain ahead of strategic competitors or adversaries, or relates to research- and development-intensive industries where adequate activity and investment can help the United States achieve or maintain technological leadership or parity with allies and partners.

With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance. Many proposed endeavors aimed at advancing STEM technologies or research, whether in academia or industry, not only have substantial merit but also have sufficiently broad potential implications to establish national importance. By contrast, proposed classroom teaching activities in STEM may have substantial merit with respect to U.S. educational interests but generally do not demonstrate national importance due to a lack of broader field-wide impact.

For the second prong, education and skills are relevant in determining whether an individual is well positioned to advance the endeavor. USCIS considers an advanced STEM degree—particularly a Ph.D.—in a field related to the proposed endeavor and to work promoting critical and emerging technologies or other important STEM areas as a particularly positive factor when considered alongside other evidence.

Individuals with a Ph.D. in a STEM field, as well as some individuals with other advanced STEM degrees, often possess specialized scientific knowledge due to the focused nature of doctoral dissertations or master's theses. Officers should consider whether the specific STEM area of concentration relates to the proposed endeavor. Even theoretical STEM fields, such as theoretical mathematics or physics, may promote U.S. competitiveness or national security, depending on the nature of the proposed endeavor.

While examples of complementary evidence are listed above, petitioners may submit any relevant evidence, including letters from interested government agencies, to demonstrate that the individual is well positioned to advance the proposed endeavor. A degree alone, however, is not sufficient to establish that an individual is well positioned.

Finally, with respect to the third prong, it is the petitioner's responsibility to establish that the factors favoring a waiver outweigh those supporting the job offer and labor certification requirements.

In evaluating the third prong, USCIS considers the following combination of facts as a strong positive factor:

- The individual holds an advanced STEM degree, especially a Ph.D.;
- The individual will engage in work that advances a critical and emerging technology or another STEM area important to U.S. competitiveness; and
- The individual is well positioned to advance a proposed STEM endeavor of national importance.

This benefit is particularly relevant when the endeavor has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested U.S. government agencies.

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

Although not required, letters from interested U.S. government agencies or quasi-governmental entities (such as federally funded research and development centers) may be useful evidence and, depending on their content, may be relevant to all three prongs. Such letters may support the first prong by establishing that the agency or entity has expertise related to the proposed endeavor and that the endeavor promises to advance a critical and emerging technology or otherwise maintain U.S. technological leadership.

Detailed letters explaining how the individual is well positioned to advance the endeavor are valuable for the second prong. Additionally, an interested government agency or quasi-governmental entity may help explain how granting the waiver outweighs the benefits of a job offer and labor certification by identifying specific urgency or describing how the United States would benefit from the individual's future contributions, even if U.S. workers are available.

#### 4. Specific Considerations for Entrepreneurs

Entrepreneurial petitions may present unique evidentiary aspects, particularly where the petitioner is pursuing a proposed endeavor through a U.S.-based entity in which the petitioner holds (or will hold) an ownership interest and plays (or will play) an active and central role, such that the petitioner’s knowledge, skills, or experience significantly drive the endeavor.

In evaluating such petitions under the three-prong framework, officers may consider that many entrepreneurs do not follow traditional career paths and that there is no single way a startup entity must be structured.

In addition to the generally applicable evidence discussed above, entrepreneurial petitioners may submit the following types of evidence:

##### Ownership and Role in the U.S.-Based Entity

Evidence of equity ownership, founder or co-founder status, and an active, central role—such as serving as a director or other key executive—may demonstrate that the petitioner is well positioned to advance the endeavor.

##### Degrees, Certifications, Licenses, Experience Letters

Such evidence may show that the petitioner possesses the knowledge, skills, or experience necessary to significantly advance the proposed endeavor, including prior successful ventures or a combination of education and experience relevant to the endeavor.

##### Investments

Investments, binding commitments to invest, or other evidence of intent to invest by external investors—such as angel investors or venture capital firms—may provide independent validation of the endeavor’s merit or of the petitioner’s positioning. USCIS also considers whether the amount of capital is appropriate for the endeavor.

### Participation in Incubators or Accelerators

Admission to incubators or accelerators may serve as an endorsement of the proposed plan or the petitioner’s track record, particularly when supported by evidence of the incubator’s or accelerator’s past success.

### Awards or Grants

Awards or grants from federal, state, or local government entities, or from research or policy institutions, may provide independent validation of the endeavor’s merit, national importance, or the petitioner’s positioning.

### Intellectual Property

Relevant intellectual property, such as patents held by the petitioner or the petitioner’s current or prior startup entities, accompanied by documentation of significance and use, may demonstrate prior success and future potential.

### Published Materials

Media coverage or other published materials highlighting the petitioner, the U.S.-based entity, or both—particularly where the petitioner’s role is identified—may evidence recognition and relevance.

### Revenue Generation, Growth, and Job Creation

Evidence of revenue growth, job creation in the United States, or both may demonstrate substantial merit, national importance, or that the petitioner is well positioned, especially when combined with evidence of economic impact in depressed areas.

### Third-Party Letters and Statements

Letters from government entities, investors, or established trade associations with knowledge of the petitioner’s work, products, services, or expertise may support all three prongs. While entrepreneurs may not undergo traditional academic peer review, they may receive third-party validation through investors, customers, or industry experts.

As noted in *Matter of Dhanasar*, “many innovations and entrepreneurial endeavors may fail, in whole or in part, despite a smart plan and competent execution.” Accordingly, petitioners are not required to establish that the proposed endeavor is more likely than not to succeed. Rather, they must demonstrate that the endeavor has substantial merit and national importance, that the petitioner is well positioned to advance it, and that, on balance, it would be beneficial to the United States to waive the job offer and labor certification requirements.

Evidence establishing past entrepreneurial achievements and corroborating projections of future work in the national interest are favorable factors. Unsupported assertions are insufficient to meet the petitioner’s burden of proof. As in all cases, officers must consider the totality of the circumstances to determine whether each of the three prongs is established by a preponderance of the evidence.

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

1. **Emphasis on EB-2 Eligibility:** It must be rigorously proven before analyzing the NIW.
2. **Connection Between Ability and Project:** A direct relationship between the candidate’s expertise and the proposed endeavor.
3. **Focus on the Specific Project:** A detailed description of the endeavor with quantifiable national impact.
4. **Use of Support Letters:** Letters from experts or government agencies are considered crucial and should address the potential impact in the U.S.

Common Pitfalls:

Neglecting base eligibility (degrees/experience), providing vague project descriptions, and lacking evidence that the candidate is “well-positioned” to carry out the plan.

Conclusion:

The EB-2 NIW policy today requires a flawless technical narrative and evidence that satisfy both the basic eligibility requirements and Dhanasar’s national interest criteria. Seeking specialized guidance is highly recommended to navigate these complexities.

## Chapter 2: Eligibility Criteria

The EB-2 NIW (National Interest Waiver) visa requires the applicant to overcome two distinct legal hurdles. First, they must prove they qualify under the EB-2 category (Second Preference). Second, they must convince the government to grant a waiver of the job offer requirement based on national interest.

### SECTION 2.1: THE FIRST STEP – EB-2 ELIGIBILITY

According to the USCIS manual, to be classified as EB-2, you must meet one of the following two paths:

#### A. Advanced Degree

You must hold a Master's or Doctorate degree (U.S. or foreign equivalent).

- **Bachelor's + 5 Rule:** If you only have a Bachelor's degree, you may still qualify if you can show the degree plus 5 years of progressive, full-time work experience in your specialty.
- **Important:** The 2026 manual emphasizes that if your U.S. position normally requires only a Bachelor's degree (e.g., a junior graphic designer), you may be disqualified for EB-2 even if you hold a Master's degree.

#### B. Exceptional Ability

If you do not hold the degrees above, you must demonstrate a level of expertise significantly above the ordinary in the sciences, arts, or business. You must meet at least 3 of the 6 regulatory criteria:

1. **Academic Degree:** Official record from a college or technical school related to your field of ability.
2. **10 Years of Experience:** Letters from current or former employers proving full-time work experience.

3. Professional License: License or certification to practice your occupation (e.g., CREA, CRM, OAB).
4. High Salary: Evidence that you earn a salary or compensation demonstrating exceptional ability compared to peers.
5. Membership in Associations: Membership in professional organizations that require significant achievements from their members.
6. Recognition for Achievements: Proof of recognition for significant contributions to the field by peers, government entities, or commercial organizations.

Two-Step Evaluation (Manual's Rigor): USCIS applies the "Kazarian Analysis." First, they check if you meet at least 3 criteria (Step 1). Then, a Final Merits Determination (Step 2) assesses whether the evidence collectively shows that you are indeed an elite professional.

## SECTION 2.2: THE SECOND STEP – PROVING NATIONAL INTEREST (NIW)

Once you've proven EB-2 eligibility, the analysis moves to the National Interest Waiver, which follows the three prongs of the Matter of Dhanasar decision.

Prong 1: Substantial Merit and National Importance of the Proposed Endeavor

It's not enough to be a talented professional; what you plan to do in the U.S. (Proposed Endeavor) must be significant.

- Substantial Merit: The project has intrinsic value (e.g., medical research, technological innovation, high-impact business management).
- National Importance: The impact must be felt on a national or broad regional scale. USCIS now evaluates whether the project creates jobs, advances critical technologies, or addresses a specific governmental need.

## Prong 2: Well-Positioned to Advance the Project

USCIS examines whether you are the right person to carry out the plan. Evidence includes:

- **Track Record of Success:** Your past achievements serve as proof of likely future success.
- **Education and Training:** Degrees and certifications relevant to the proposed endeavor.
- **Third-Party Interest:** Letters of intent from partners, investors, users, or clients in the U.S.
- **Action Plan:** A detailed project outline (or business plan) showing how the endeavor will be executed.

## Prong 3: Balancing of Interests

You must show that the benefit of your entry outweighs the need to protect the U.S. labor market. Urgent factors such as public health, national security, or competitiveness in STEM fields are considered here.

## SECTION 2.3: SPECIFIC CASES AND STRONG EVIDENCE

### 1. STEM Professionals and Critical Technologies

The updated manual (2025/2026) notes that a Ph.D. in STEM or a master's in critical technologies (AI, Cybersecurity, Bioengineering) is a strong positive factor. If your work involves U.S. national security or economic competitiveness, the manual indicates that national interest is presumed to be “strongly favorable.”

### 2. Entrepreneurs and Endeavor Activities

If you are a company founder, the manual allows modern forms of evidence:

- **Investments:** Proof of capital received from angel investors or venture capital firms.

- Accelerators: Acceptance into nationally recognized incubation programs.
- Economic Impact: Projections of tax generation and creation of skilled jobs.

### 3. Expert Support (Recommendation Letters)

Recommendation letters should not be just “praise.” According to the manual, they should:

- Explain the technical importance of your work in language accessible to the officer (lay terms).
- Provide specific examples of how you have influenced your field.
- Ideally come from independent experts (people who haven’t worked directly with you but know your reputation).

### 4. Comparison and Recognition

Unlike the EB-1A (Extraordinary Ability) visa, EB-2 NIW does not require you to be the best in the world, but you must be significantly above the ordinary. The manual suggests comparing salaries and achievements to reinforce this point.

### Conclusion

EB-2 NIW eligibility in 2026 requires careful documentation. Success depends not only on proving your past accomplishments (Section 1.5 – Step 1) but also the feasibility and importance of your future project (Dhanasar Prongs). Organize your evidence clearly, prioritizing objective documentation like patents, contracts, and degrees over purely subjective statements.

## Chapter 3: Preparing Your Petition

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

## SECTION 3.1: REVIEW OF ELIGIBILITY CRITERIA

Before starting your petition, it is essential to carefully review the eligibility criteria presented in Chapter 2. Make sure you understand each aspect and how it applies to your profile and field of work.

### 1. Demonstrating Exceptional Ability

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

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

- **Strong Evidence:**  
Present concrete and well-documented evidence of your exceptional ability. This may include awards, publications, patents, innovative work, presentations, and similar achievements.
- **Impact on Your Field:**  
Highlight how your skills have had a significant impact on your field. This impact may be scientific, technological, economic, social, or cultural.
- **Recognition by the Professional Community:**  
Show that you are recognized and respected within your professional community. This can be demonstrated through support letters, expert testimonials, or citations in relevant publications.
- **Comparison with Peer Professionals:**

Compare your accomplishments and skills with those of other professionals in the same field, emphasizing how your contributions stand out as distinct and exceptional.

- **Relevance to the National Interest:**  
Clearly connect your exceptional ability to the U.S. national interest, explaining how your skills benefit the country as a whole.

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

### 2. Proving National Interest (the “Proposed Endeavor”)

Proving national interest is a central pillar of the EB-2 NIW petition. The applicant must demonstrate that their professional proposal—technically referred to by USCIS as the “Proposed Endeavor”—has substantial merit and serves the interests of the United States in a way that justifies waiving the job offer requirement.

Key aspects to understand when proving national interest include:

- **Benefits to the U.S. Economy or Society:**  
It is critical to show how your proposed endeavor will benefit the U.S. economy, society, or other important national interests. Examples include job creation, technological advancement, public health contributions, and scientific progress.
- **Priority for STEM Fields (Science, Technology, Engineering, and Mathematics):**  
According to the 2026 USCIS manual updates, advancement in STEM fields and in critical and emerging technologies is considered vital to U.S. competitiveness and national security. Professionals in these areas—especially those holding advanced degrees such as a Ph.D.—receive favorable guidance when establishing national interest.

- **Contribution to Areas of Need or Shortage:**  
Emphasize if your proposed endeavor addresses a specific area of need in the U.S. where there is a shortage of qualified professionals, particularly in STEM fields.
- **Affiliation with Institutions or Projects of National Interest:**  
Demonstrate whether your proposal is connected to institutions, organizations, or projects considered to be of national interest.
- **Support from Experts and Institutions:**  
Obtain support letters from experts and organizations that validate the relevance and national importance of your proposed endeavor. Such external endorsements can be critical in strengthening your case.
- **Connection Between Exceptional Ability and National Interest:**  
Clearly link your exceptional ability to how it serves U.S. national interests, showing how your presence in the United States will provide unique and meaningful benefits.

The national interest argument should clearly demonstrate that your presence in the United States offers substantial value, justifying the waiver of the job offer requirement.

### 3. Educational and Professional Background

Educational and professional background is a crucial criterion for an EB-2 NIW petition. Applicants must demonstrate training and experience that qualify them exceptionally in their field, proving that they are “well positioned” to carry out the proposed endeavor. Key points include:

- **Academic Qualifications and Equivalency:**  
Highlight academic credentials relevant to your field, including degrees, certificates, coursework, and other related qualifications.
- **Significant Professional Experience:**  
Demonstrate professional experience, especially experience directly related to your proposed endeavor in the United States. Emphasize projects, responsibilities, and achievements that show your expertise.

- **Contributions to the Field:**  
Show how your education and experience have resulted in notable contributions such as publications, research, innovations, or awards.
- **Connection to the U.S. Proposed Endeavor:**  
Explain how your background directly supports your proposed endeavor in the United States and uniquely prepares you to execute it successfully.
- **Professional Recognition:**  
Demonstrate recognition such as fellowships, grants, or invitations to conferences, which validate your excellence in the field.

#### 4. Specific Cases and Adaptation

The EB-2 NIW petition is flexible and can be adapted to a wide range of professional situations:

- **Self-Employed Professionals and Entrepreneurs:**  
Demonstrate how your proposed endeavor is substantially beneficial to the United States.
- **Artists and Creative Professionals:**  
Show exceptional ability and how your talent contributes to U.S. culture and the artistic landscape, highlighting awards, exhibitions, and publications.
- **Academics and Researchers:**  
Demonstrate your unique contribution to your field and the impact of your research on the academic community, emphasizing citations and collaborations.
- **Adaptation to the Field of Practice:**  
Tailor your petition to reflect the nature of your field in the United States and how your proposed endeavor aligns with the specific demands of the U.S. market.

Technical Note to the Reader: A careful review of these criteria ensures that your narrative is not merely an “expanded résumé,” but a solid legal argument demonstrating that your presence is vital to the development and progress of the United States.

## SECTION 3.2: COLLECTION OF SUPPORTING DOCUMENTATION

Gather all relevant documents that support your eligibility, including degrees, certificates, awards, publications, recommendation letters, and other evidence demonstrating your exceptional ability and contributions to the national interest.

### 1. Identification of Relevant Documents

Identifying relevant documents is the first essential step in collecting documentation for your EB-2 NIW petition. These documents must be carefully selected to support and substantiate the claims made in your petition. Identify the most relevant materials, including:

- **Degrees and Certificates:**  
Include copies of all degrees, undergraduate and graduate diplomas, specializations, and other educational records. Under the 2026 manual, remember that if you are using the Bachelor’s + 5 years of experience route, experience letters must be detailed and specific.
- **Awards and Professional Recognition:**  
Provide documentation of awards, honors, and any other form of professional recognition in your field.
- **Publications and Research:**  
Include copies of, or references to, publications, research papers, articles, or reports you have produced.
- **Patents and Innovations:**  
Document any relevant patents, innovations, or discoveries.

- **Professional Experience:**  
Submit evidence of your work experience, including employment letters, contracts, performance evaluations, and references.
- **Professional Certifications:**  
Include copies of certifications relevant to your profession.
- **Other Field-Specific Documents:**  
Identify any additional documents specific to your professional field that may strengthen your petition.

When identifying and gathering this documentation, ensure that all materials are complete, up to date, and ready to be presented as evidence of your professional excellence and significant contributions to your field.

### 2. Organization and Cataloging

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

Organize the documents in a clear and logical manner, creating a cataloging system that facilitates review and presentation throughout the petition process.

- **Create a Filing System:**
  - Establish an organized filing system, whether physical or digital.
  - Create folders or categories to group documents by type, such as degrees, awards, publications, and so on.
- **Label and Describe:**
  - Clearly label each document according to its content and relevance to the petition.
  - Provide brief descriptions to allow quick identification of each document's purpose.

- **Maintain a Checklist:**
  - Create a checklist detailing all documents to be included in the petition.
  - Check off items as they are organized and added to ensure nothing is overlooked.
- **Scan and Back Up Documents:**
  - If documents are in physical form, scan them for easier sharing and preservation.
  - Create backups on secure devices or cloud storage to protect your files.
- **Maintain an Updated Version:**
  - Keep an updated version of your documentation reflecting any additions, updates, or changes made during preparation.

Effective organization and careful cataloging not only facilitate presentation but also demonstrate professionalism and diligence in preparing your case.

### 3. Translation and Authentication

Proper translation and authentication are critical steps when collecting documents for your EB-2 NIW petition. All documents must be available in the required language (U.S. English, pursuant to 8 CFR 103.2(b)(3)), and translations must be properly certified when required.

- **Certified Translation:**

The translator must provide a certification stating that the translation is accurate and that they are competent to translate from the original language into English. Notarization is not required, but the translation must be certified and signed by the translator.
- **Accuracy:**

Ensure that dates, names, and proper nouns are correctly translated to avoid inconsistencies with the original documents.
- **Retain Original Documents:**

Keep copies of the original-language documents along with the certified translations for reference and comparison.

Proper translation and authentication ensure that adjudicators can fully understand the submitted evidence, facilitating review and contributing to a successful petition.

#### 4. Support and Reference Letters

Support and reference letters are valuable components of the evidentiary record for an EB-2 NIW petition. These letters provide external perspectives on your skills, achievements, and professional contributions, reinforcing your eligibility.

- **Careful Selection of Recommenders:**  
Choose qualified and respected individuals in your field, such as supervisors, colleagues, or recognized experts.
- **Strategic Update:**  
USCIS places significant value on letters from independent experts—individuals who have not worked directly with you but are familiar with your work through publications or market impact. These letters demonstrate that your reputation extends beyond personal relationships.
- **Clear Instructions to Recommenders:**  
Recommenders should emphasize your exceptional ability and explain how your Proposed Endeavor benefits the United States.
- **Recommender Credentials:**  
Always attach a brief résumé or professional bio of the letter writer to establish their authority and credibility with USCIS.
- **Early Collection and Coordination:**  
Begin collecting support letters early to allow sufficient time for coordination and to ensure all letters are ready before filing.

Support and reference letters are an effective way to validate your qualifications before USCIS by providing credible third-party testimony in support of your petition.

## 5. Additional Field-Specific Documents

Beyond core documentation, certain professions or fields may require additional materials to further strengthen an EB-2 NIW petition. These supplemental documents can highlight your professional excellence and unique contributions.

- **Professional Portfolios:**  
Creative professionals should consider including a portfolio with representative samples of their work, such as design projects, artwork, or publications.
- **Field-Specific Professional Certifications:**  
Depending on your field, professional certifications may be essential to validate your qualifications.
- **Evidence of Specific Achievements:**  
Include documentation of awards, honors, fellowships, or other notable achievements.
- **Research Projects and Innovations:**  
Researchers and innovators should document research projects, case studies, technological innovations, or relevant discoveries.
- **Additional Publications and Articles:**  
If you have additional relevant publications not included elsewhere, consider submitting them as supplemental evidence.
- **Funding Evidence:**  
For researchers or entrepreneurs, include proof of grants, angel investments, or venture capital funding.
- **Media Coverage:**  
News articles or online features mentioning you or your work can be strong supporting evidence.

Including appropriate additional documentation can add depth and substance to your petition, strengthening your case for EB-2 NIW approval.

## 6. Comprehensive Review

Before submission, verify that all translations are included, that support letters properly reference your U.S. project, and that there are no grammatical or formatting errors that could undermine the petition's professionalism.

- **Verification of Essential Documents:**  
Ensure that all core documents—degrees, certificates, awards, and publications—are present and well organized.
- **Confirmation of Translations and Certifications:**  
Confirm that all translations are accurate and properly certified where required.
- **Ensure Consistency and Clarity:**  
Make sure the documentation clearly and consistently presents your accomplishments and experience.
- **Review of Support Letters:**  
Check that support and reference letters follow the provided guidance and effectively highlight your qualifications.
- **Review of Additional Documents:**  
Confirm that all field-specific documents are accurate, current, and relevant.
- **Correction of Errors:**  
Correct any grammatical, typographical, or formatting errors identified during review.

A comprehensive review ensures that your petition is presented accurately and professionally, increasing the likelihood of a favorable and efficient adjudication by USCIS.

Careful collection of supporting documentation is critical to building a robust and well-founded petition. The evidence submitted must corroborate your claims, clearly and convincingly demonstrating your qualifications, skills, and contributions.

Printing Tip: When organizing physical evidence, use numbered dividers that correspond to your Exhibit List. This greatly facilitates USCIS review and demonstrates diligence and professionalism.

## SECTION 3.3: CREATING A PROFESSIONAL PLAN OR BUSINESS PLAN

Based on your professional or business background, prepare the appropriate plan—either a Professional Plan or a Business Plan. Make sure these plans are well structured, detailed, and aligned with the eligibility criteria.

### Professional Plan

The Professional Plan focuses on the individual’s professional activities and achievements as a highly qualified professional in their field. It outlines exceptional skills, past and future contributions, relevant educational background, and any awards or recognitions received. This plan demonstrates how the applicant adds value to the United States due to their experience and expertise.

### Business Plan

The Business Plan, on the other hand, is centered on entrepreneurial activities. It describes the company’s structure and operations, including market analysis, growth strategies, financial projections, and how the business will contribute to the U.S. economy. The Business Plan is particularly relevant for applicants involved in business ventures, startups, or those planning to establish a company in the United States.

The Professional Plan or Business Plan plays a critical role in an EB-2 NIW immigrant visa petition for the United States. These documents outline the applicant’s planned professional activities in the country, providing clear and detailed information on how the applicant intends to contribute to the U.S. national interest.

The immigration officer will carefully review the submitted plan to understand the proposed course of action—referred to by USCIS as the “Proposed Endeavor”—and to determine whether the applicant meets the requirements for a National Interest Waiver (NIW).

A fundamental characteristic of the EB-2 NIW visa is the absence of a requirement for a job offer from a U.S. employer. However, this makes it imperative to submit, together with the professional activity plan, a comprehensive set of documents demonstrating the applicant’s qualifications and eligibility for the job offer waiver based on national interest.

The Professional Plan or Business Plan is an essential component that enables the immigration officer to assess whether the applicant meets the rigorous NIW criteria. As such, this step is indispensable for any petition of this visa category.

### Preparing a Business Plan for EB-2 NIW

As the name suggests, the Business Plan is aimed at EB-2–eligible professionals who intend to pursue entrepreneurial activities in the United States. It is especially relevant for those who have a business venture planned to be executed in the U.S. The EB-2 NIW offers qualified entrepreneurs the opportunity to start a business in the United States without the need for an investor visa, making it an attractive alternative for eligible professionals.

However, merely submitting a business plan is not sufficient. It is essential to demonstrate that the business, as proposed, meets the national interest requirements. To satisfy the first prong, the petitioner may argue that the business will have a positive impact on its field, demonstrate its economic impact in the region where it will operate, or show how it will contribute to job creation for U.S. workers.

The second prong focuses on the petitioner’s professional qualifications to carry out the proposed plan. The Business Plan must demonstrate the applicant’s preparation and experience to successfully execute the business venture. Finally, the Business Plan inherently addresses the third prong, since there can be no job offer when the petitioner is starting and operating their own business.

It is important to emphasize that this explanation is a simplified overview intended to facilitate understanding of the Business Plan in the EB-2 NIW context. Each case requires a detailed analysis by an attorney to ensure a successful outcome. The Business Plan is a comprehensive document that includes market analysis, target audience profiling, investment estimates, projected economic returns, and evidence demonstrating that the petitioner is qualified to succeed with the proposed enterprise.

Below are some critical elements that a Business Plan should address:

1. Market Analysis:
  - Identification and analysis of the U.S. target market.
  - Consumer characteristics and behavior.
  - Competitive landscape and market positioning.
  
2. Target Audience Profile:
  - Detailed demographic and psychographic profile of potential customers.
  - Strategies to reach and attract this audience.
  
3. Financial Projections:
  - Comprehensive financial projections, including revenue, expenses, and cash flow.
  - Realistic assessment of startup and operating costs.
  
4. Marketing Strategies:
  - Marketing tactics and channels to promote the business in the U.S.
  - Strategies to increase visibility and market share.
  
5. Implementation Strategies:
  - Detailed plan for establishing and operating the business in the U.S.
  - Description of the steps required for effective execution of the business plan.

6. Economic Return and Investment:
  - Assessment of the potential return on investment.
  - Discussion of the economic viability of the enterprise.
  
7. Petitioner’s Professional Qualifications:
  - Highlight the education, experience, and skills that qualify the petitioner to successfully lead the business.
  - Evidence of technical and managerial capacity to implement the proposed plan.
  
8. Management Strategies:
  - Description of the organizational structure.
  - Breakdown of key management roles.
  - Explanation of how operations will be coordinated and supervised.
  
9. Risk and Contingency Strategies:
  - Identification of major risks the business may face.
  - Contingency plans to mitigate those risks.
  - Strategies to address challenges and adverse scenarios.
  
10. Regional Economic Impact:
  - Analysis of how the business will contribute to the local economy.
  - Estimates of job creation and economic development.
  - Demonstration of the positive impact on the surrounding community.
  
11. Growth and Expansion Strategies:
  - Plan for sustainable growth and expansion.
  - Identification of opportunities to broaden market reach and offerings.
  - Strategies to enter new markets or introduce new products and services.

12. Supporting Documentation:

- Inclusion of data, charts, market research, industry studies, and other supporting evidence.
- Documents that substantiate financial projections and overall business viability.

The Business Plan must be detailed, realistic, and persuasive, providing a clear picture of how the business will operate, its market impact, growth strategies, and how the petitioner is qualified to lead the venture. Each section should be supported by solid data and accurate analysis.

To ensure that your plan functions as legal evidence for USCIS, follow these technical guidelines:

- **Connection to Federal Priorities:**  
When describing your business, do not focus solely on profitability. Research and reference current Executive Orders or federal laws (e.g., the Inflation Reduction Act or AI policy guidelines) that demonstrate your industry is considered a national priority. This helps establish Substantial Merit.
- **Use of Government Data:**  
For market analysis, rely on statistics from the U.S. Bureau of Labor Statistics (BLS) to demonstrate demand for your services. Immigration officers place strong trust in government sources.
- **Hiring Plan:**  
This is one of the most critical elements for demonstrating National Importance. Create a five-year hiring table detailing the positions to be created, projected salaries, and anticipated hiring timelines for U.S. citizens or permanent residents.
- **Operational Milestones:**  
Break down the first 24 months into quarterly milestones (e.g., Q1: Registration and Licensing; Q2: Office Lease and Marketing; Q3: Start of Operations). This demonstrates that you are well positioned to advance the endeavor.

- **Financial Viability:**  
Your projections should include a five-year Profit and Loss Statement (P&L) and Cash Flow analysis. The business must demonstrate the ability to be self-sustaining without reliance on government assistance.

### Preparing a Professional Plan for EB-2 NIW

The Professional Plan is used in EB-2 NIW cases for professionals who do not intend to open a business in the United States. It is designed for individuals seeking to enter the U.S. labor market as employees rather than entrepreneurs.

The Professional Plan can also present arguments demonstrating that the petitioner meets all the requirements to show that the proposed endeavor has substantial merit and national interest. One argument commonly used to satisfy the first prong is the contribution the professional can make to the field due to qualifications that are clearly above average. Another frequently used argument is the existence of a shortage of qualified professionals in that specific field in the United States, allowing the foreign national to fill positions that remain vacant due to the lack of skilled labor.

However, caution is required. The shortage-of-professionals argument, when used alone, is not sufficient to support approval of a national interest visa under the 2026 USCIS Policy Manual guidelines.

The professional's qualifications are primarily presented to satisfy the second and third prongs. If the profession requires a license in the United States, there are several possible approaches. It is important to emphasize that holding a U.S. license is not a requirement to apply for EB-2 NIW.

It is possible to obtain the license before filing the EB-2 NIW petition, but this is not always feasible for all professionals. In some fields, obtaining a license requires several years of study in the United States. In such cases, one viable approach is to demonstrate that the professional has already initiated the licensing process.

In any case, understand that the process of obtaining a professional license can be carried out in parallel with the EB-2 NIW petition. Therefore, the Professional Plan should also demonstrate that the professional will contribute positively to the country and possesses the essential qualifications required to do so.

Typically, a Professional Plan is used by research professionals who intend to enter the U.S. labor market to continue their work in laboratories or similar environments, or by professionals for whom the capital required to start a business is too high relative to their financial capacity or ability to raise investment.

In summary, the Professional Plan assumes a future employment relationship for the execution of the proposed endeavor. Therefore, the choice between a Professional Plan and a Business Plan must be carefully evaluated in light of the applicant's academic and professional background, the proposed plan, and the U.S. labor market.

To ensure that your Professional Plan demonstrates that you are well positioned and that your work is of national importance, follow these technical guidelines:

- **Definition of the Career Plan (The Endeavor):**  
Do not simply state that you want to “work” in the U.S. Define a specific niche of activity (e.g., “Working as a Structural Engineer on interstate bridge revitalization projects”). The more specific the endeavor, the easier it is to demonstrate national importance.
- **Market Gap Analysis:**  
Research reports from U.S. professional associations or data from the Department of Labor (DOL) that show how your expertise addresses specific challenges currently faced by the U.S. industry.
- **Projection of Professional Impact:**  
Describe the goals you intend to achieve in the first five years (e.g., U.S. certifications to be obtained, conferences where you plan to present, or innovations you intend to implement within the organizations where you will work).

- **Letters of Intent or Interest:**  
When possible, include communications from potential U.S. employers or partners expressing interest in your technical profile. This demonstrates that the U.S. market values and demands your expertise.
- **Demonstration of Transferable Skills:**  
Explain how your past successes in your home country can be replicated in the United States. Show that your work methodology is compatible with—and exceeds—average U.S. standards.

### Steps to Build a Successful Professional Plan

1. **Detailed Research:**
  - Conduct thorough research on your professional field in the United States.
  - Identify labor market gaps and opportunities where your skills can add value.
2. **Identification of Relevant Qualifications and Experience:**
  - Highlight your qualifications, professional experience, and relevant achievements.
  - Emphasize projects, publications, awards, certifications, or any other evidence of professional excellence.
3. **Clear Plan Structure:**
  - Divide the plan into well-defined sections, including an introduction, description of qualifications, proposed contribution to the field, and licensing process, if applicable.
  - Ensure the structure allows for smooth reading and easy understanding.
4. **Persuasive Argumentation:**
  - Use strong arguments to demonstrate your contribution to the U.S. national interest.
  - Highlight how your exceptional skills address real problems and meet market needs.

5. Explanation of Workforce Shortages:
  - Address the shortage of qualified professionals in your field in the U.S. and how you can help fill that gap.
  - Demonstrate that your presence in the labor market is essential to meeting existing demand.
  
6. Emphasis on Professional Qualifications:
  - Present your academic background, professional experience, skills, and relevant knowledge.
  - Clearly connect your qualifications to the contribution you are prepared to make.
  
7. Case Studies or Concrete Examples:
  - Include case studies or real examples where your skills were critical and benefited a project or organization.
  - Use real-world scenarios to illustrate your potential contribution in the United States.
  
8. Review and Refinement:
  - Carefully reread and review your Professional Plan.
  - Make adjustments to ensure clarity, consistency, and accuracy.

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

## SECTION 3.4: PREPARATION OF LETTERS OF SUPPORT AND RECOMMENDATION

Request Letters of Support and Recommendation from colleagues, supervisors, and other specialists in the field. These letters provide valuable external insight into your skills, achievements, and professional contributions, reinforcing the validity and merit of your petition.

For these letters to function as high-impact legal evidence, use the following technical guidelines:

- **Focus on Original Contribution:**  
The USCIS officer does not want to know only whether you are a “good professional.” The letter must describe, in clear and technical terms, what your original contribution to the field was and why it is important to the United States.
- **Independent Expert Letters:**  
In addition to mentors and supervisors, try to obtain letters from individuals who have never worked directly with you but are familiar with your reputation or have used your projects or research. For USCIS, testimony from an “independent” source carries much greater evidentiary weight.
- **Avoid Generic Language:**  
Replace phrases such as “he is very dedicated” with statements like “he implemented methodology X, which reduced costs by 30%.” Quantitative data within the letters increases credibility.
- **Signer’s Curriculum:**  
Each letter must be accompanied by a brief summary of the qualifications of the person signing it. If the author is not recognized as a specialist, the letter will have little evidentiary value.
- **The “Nexus” with the U.S. Proposal:**  
The letter must explicitly state that the author believes your presence in the United States will be of great benefit to the country in the future, connecting your past achievements with your “Proposed Endeavor.”

### Identification of Appropriate Recommenders

Identifying appropriate recommenders is a crucial step in preparing support and recommendation letters for the EB-2 NIW petition. Recommenders must be individuals who have credibility and knowledge of your professional skills and achievements. Below are detailed guidelines for identifying suitable recommenders:

## EB-2 NIW – Complete Guide

1. **Qualified Professionals in Your Field of Practice:**  
Choose individuals who are specialists in your professional area, with deep knowledge and recognition within the community.
2. **Respected Supervisors and Coworkers:**  
Consider your current or former supervisors, as well as coworkers with whom you have collaborated in a significant way.
3. **Peers from Other Recognized Organizations:**  
Whenever possible, include recommendations from professionals from other well-recognized organizations in your field of practice.
4. **Renowned Industry Specialists:**  
Seek letters from specialists and leaders who are recognized in your industry or professional field.
5. **Respected Academics or Researchers:**  
When applicable, include academics, researchers, or well-regarded professors who are familiar with your academic achievements and contributions.
6. **Professional Collaboration Partners:**  
If you have collaborated with professionals on projects or research, consider requesting recommendations from those partners.
7. **Recommenders with International Credibility:**  
If your work has an international scope, include recommendations from professionals who are internationally recognized in your field.
8. **Recommenders with Practical Knowledge:**  
Choose recommenders who have practical knowledge of your skills, achievements, and impact in your professional field.

### Communication of EB-2 NIW Criteria:

Clearly communicating the EB-2 NIW (National Interest Waiver) criteria to the authors of support and recommendation letters is essential to ensure that they can accurately and effectively address the key aspects required for a successful petition. Below are detailed guidelines on how to communicate these criteria:

1. Explain the EB-2 NIW Concept:  
Introduce the EB-2 NIW and explain that it is a visa category that seeks individuals with exceptional abilities whose presence in the United States is in the national interest.
2. Highlight the Key EB-2 NIW Criteria:  
Explain the fundamental criteria, such as exceptional ability, contribution to the field, and demonstration of national interest, detailing each one.
3. Exceptional Ability:  
Specify that exceptional ability must be proven through substantial evidence of success in the professional field, above the average.
4. Contribution to the Field:  
Emphasize that it is necessary to demonstrate significant contributions to the field of expertise and how these contributions positively impact the profession.
5. Demonstration of National Interest:  
Explain that the applicant's presence in the United States must be in the national interest, promoting substantial benefits to the country's society, economy, or culture.
6. Encourage a Detailed Approach:  
Encourage letter writers to provide concrete examples and evidence that support each criterion, demonstrating how the applicant meets these requirements.
7. Request Specific References:  
Ask them to make specific references to projects, achievements, and qualities that attest to the applicant's technical ability/knowledge and impact in the field of practice.
8. Provide Content Guidance:  
Offer suggestions regarding the structure and content that may be included in the letter, such as professional achievements, awards, publications, among others.

Ensuring that letter writers fully understand the EB-2 NIW criteria is essential to obtaining support and recommendation letters that highlight your achievements and contributions to the field, thereby strengthening your petition.

### Detailed Guidance for Letter Writers:

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

- 1. Introduction and Relationship:**  
Begin the letter with a brief introduction about who the letter writer is, their relationship with the applicant, and why they are qualified to provide the recommendation.
- 2. Understand the EB-2 NIW Criteria:**  
Familiarize yourself with the EB-2 NIW criteria, especially regarding exceptional ability, contribution to the field, and demonstration of national interest.
- 3. Highlight the Applicant's Exceptional Abilities:**  
Provide clear examples and evidence of the applicant's exceptional abilities, emphasizing above-average achievements and professional recognitions.
- 4. Address Significant Contributions to the Field:**  
Describe how the applicant has made significant contributions to their field, mentioning projects, research, or innovations that had an impact.
- 5. Demonstrate National Interest in the Applicant's U.S. Presence:**  
Explain why the applicant's presence in the U.S. is in the national interest, highlighting the benefits they can bring to the professional community and/or the economy.
- 6. Provide Examples and Achievements:**  
Offer concrete examples of the applicant's professional accomplishments, such as publications, awards, patents, leadership in projects, and more.

7. **Include Relevant Personal and Professional Qualities:**  
Comment on the applicant’s personal and professional characteristics that make them exceptional, such as work ethic, leadership skills, integrity, among others.
8. **Conclude with a Strong Recommendation:**  
End the letter by strongly recommending the applicant for the EB-2 NIW, emphasizing their exceptional ability and the importance of their presence in the U.S.
9. **Contact Information for Further Inquiries:**  
Provide contact information in case the immigration officer needs additional clarification about the recommendation.

By offering detailed guidance, you ensure that letter writers can produce impactful support letters aligned with EB-2 NIW criteria, thereby strengthening the applicant’s petition.

#### Perspectives on Exceptional Ability:

When requesting support and recommendation letters for the EB-2 NIW petition, it is important to guide the letter writers to provide strong perspectives on the applicant’s exceptional ability. Here are some detailed guidelines for doing so:

1. **Contextualize the Applicant’s Skills:**  
Ask them to describe the specific skills and competencies that make the applicant stand out in their field.
2. **Illustrate with Notable Achievements:**  
Request that they highlight specific accomplishments of the applicant that demonstrate exceptional ability, such as awards, successful projects, relevant publications, and more.
3. **Demonstrate Positive Impact:**  
Encourage them to explain how the applicant’s skills have positively impacted their professional field, whether by improving processes, contributing to technological advances, or raising industry standards.

4. **Comparison with Peers:**  
Ask them to compare the applicant’s ability with other professionals in the same field, showing how the applicant stands out and exceeds the average.
5. **Involvement in Complex Projects:**  
If the applicant participated in complex or challenging projects, encourage providing details about their contribution and how their skills were crucial to the success of these projects.
6. **Innovation and Creativity:**  
Guide them to address the applicant’s ability to think innovatively and creatively, highlighting examples of original ideas and creative solutions they have proposed.
7. **Peer Feedback and Recognition:**  
If possible, request inclusion of feedback from colleagues or formal recognitions that validate the applicant’s exceptional ability.
8. **Highlight Experience and Professional Background:**  
Encourage them to link the applicant’s exceptional skills to their extensive professional experience and track record of accomplishments.

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

#### Strong Argumentation for National Interest:

To obtain effective support and recommendation letters that present strong argumentation for the applicant’s national interest in being in the U.S. under the EB-2 NIW, it is essential to guide the letter writers to address this aspect accurately and convincingly. Here are detailed guidelines to ensure solid argumentation:

1. **Highlight Past Contributions:**  
Request that they mention the applicant’s past contributions that benefited their field in the U.S., such as process improvements, job creation, or technological advancements.

2. **Relate to Current or Future Needs:**  
Guide them to connect the applicant's skills and experiences with the current or future needs of the U.S. in their professional area.
3. **Reference National Policies and Strategies:**  
Encourage them to reference U.S. national policies or strategies that emphasize the importance of advancement in the applicant's field.
4. **Address Contribution to Economy and Innovation:**  
Ask them to highlight how the applicant's presence in the U.S. can boost the local economy, create jobs, or foster innovation.
5. **Respond to Specific Professional Community Demands:**  
Encourage providing examples of how the applicant's presence can meet specific needs of the professional community in the U.S.
6. **Involvement in National Interest Projects:**  
If applicable, guide them to mention whether the applicant is involved in projects with direct impact and relevance to national interest.
7. **Reference Strategic Partnerships and Collaborations:**  
If the applicant has partnerships with strategic organizations in the U.S., encourage mentioning how these collaborations promote national interest.
8. **Point Out Benefits to Society:**  
Guide them to describe how the applicant's activities and contributions benefit U.S. society, whether through education, health, environment, or other sectors.
9. **Use Relevant Data and Statistics:**  
Suggest including statistical data or quantitative information that supports the argument about the benefit to national interest.

Providing detailed guidance ensures that support and recommendation letters present robust argumentation regarding the national interest of the applicant's presence in the U.S., thereby strengthening the petition.

### Advanced Collection and Coordination:

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

- 1. Identify Appropriate Letter Writers Early:**  
Start by identifying the ideal letter writers and approaching them well in advance so they can dedicate time to preparing the letters.
- 2. Provide Clear Guidance and Set Deadlines:**  
Clearly communicate the EB-2 NIW criteria and provide detailed guidance to ensure the writers understand what is required. Set clear deadlines for submitting the letters.
- 3. Explain Importance and Relevance:**  
Highlight the importance of the support letters and how they will contribute to the success of the applicant's petition, emphasizing the relevance of each writer.
- 4. Provide Templates or Letter Structure:**  
Provide templates or suggested structures for the letters, making the preparation process easier for the writers.
- 5. Coordinate Letter Content:**  
Ensure that the letters address different relevant aspects, such as exceptional ability, contribution to the field, and national interest.
- 6. Maintain Constant Communication:**  
Keep in regular contact with the letter writers to clarify doubts, offer additional support, and ensure alignment with the petition's goals.
- 7. Review and Request Adjustments if Necessary:**  
Ask the writers to share the letters in advance so you can review and suggest adjustments, if needed, to ensure they meet the EB-2 NIW criteria.

8. Ensure Timely Submission:

Closely follow up to ensure the letters are submitted within the established deadline, avoiding delays in preparing the petition.

Advanced collection and coordination of support letters allow for an organized process, ensuring that the letters align with EB-2 NIW criteria and effectively strengthen the petition. Careful preparation of support and recommendation letters is critical to reinforcing your petition, demonstrating substantial recognition and backing from the professional community regarding your skills and proposed work in the U.S.

A recommendation letter is also called a reference letter, support letter, or testimonial letter. Recommendation letters are essential in a NIW (National Interest Waiver) petition. Since USCIS officers are rarely experts in the petitioner's specific field, the only way to determine if you meet the legal standard for immigration (extraordinary ability, exceptional ability, with the right to waive a job offer) is by examining objective evidence presented. Evidence includes, but is not limited to, articles, publications, memos, expert testimonies, citations, awards, and recommendation/reference letters.

A well-written recommendation letter can be decisive for your petition, and drafting these letters requires a good understanding of USCIS regulations and immigration law. The more the letter addresses regional and/or national aspects of your proposed work, as well as the impact of your proposal within your professional area, demonstrating your achievements and how they may affect future or current actions, the higher the chances that the letter will be considered as a reference to your final NIW petition.

USCIS and the AAO continue to indicate that the NIW standard, unlike EB1-A, is flexible. That is, there is no minimum requirement for articles and citations. While frequent citations can certainly strengthen a researcher's claim of having influenced a field, a lack of frequent citations does not preclude eligibility when other objective evidence of the petitioner's influence exists. Likewise, merely being substantially cited does not, by itself, establish NIW eligibility. Original and significant contribution to the field is an essential consideration for USCIS in deciding a NIW case, and thus, establishing the petitioner's contribution heavily relies on recommendation letters. Therefore, the list of people who write your recommendation letters and the content of these letters are

fundamental in establishing your substantial contribution in your professional field.

Many people confuse recommendation/reference letters for the I-140 petition with those for advanced education. Typically, a recommendation letter for graduate or doctoral programs is a detailed discussion by a faculty member of the candidate's personal qualities, achievements, and experiences that make the candidate unique and perfect for the programs applied to. However, for the NIW, recommendation/reference letters for the I-140 petition focus on the foreign national's influence and contribution to the field. They are not necessarily from people who know the petitioner personally or in depth, but rather from those who, independently and objectively, have been present for or have used the petitioner's professional endeavors.

Individuals recognized as authorities or experts in the petitioner's field generally carry more weight as recommendation letter writers for the NIW, as their opinions are considered more authoritative regarding the petitioner's experience and qualifications. Along with the NIW recommendation letter, a brief CV of the letter's author is recommended, highlighting their academic background and professional experience, or even a summarized professional statement, establishing the author's qualifications to evaluate the petitioner's work. NIW testimonial letters from undistinguished colleagues or former instructors are more likely to be scrutinized by USCIS officers than letters from high-level employees of major recognized organizations.

In addition to being a specialist in the field of your endeavor, it is preferable that the person writing your NIW recommendation letter knows your work, research, and/or contributions well enough to address them specifically in the letter. Therefore, someone with a prominent reputation in your field is a better candidate than someone from your immediate circle. In other words, a perfect candidate would be an independent expert who knows or can identify your contribution.

Although it is almost universal practice for NIW reference letters to be drafted by the petitioners themselves or their attorneys for the recommender to merely review and sign, USCIS adjudicators expect the opposite. This creates a major issue for your NIW petition if the submitted recommendation/reference letters are substantially similar. Some NIW petition cases suggest that such

letters are considered suspicious and the merits of the letters are significantly disregarded.

Therefore, do your best to make the letters appear different, making basic variations such as different fonts, formats, or using more advanced techniques such as different writing styles, sentence structures, tones, and advocacy approaches. Always remember that someone will be reviewing everything you submit. The worst scenario is having the same grammatical error in all recommendation/reference letters.

We know that many people do not have the time, willingness, or even ability to write a strong recommendation letter, which justifies providing a draft for them to review and sign. However, some points should be noted to avoid the issues mentioned above: include only data and information related to your work, research, projects, and everything directly connected to your NIW proposal and relevant to the field of the person signing your letter. Or, if it is an independent consultant, specify all details of your achievements so they have sufficient material to evaluate the importance and relevance of them.

It is important to maintain focus on the relevance of your contributions to your project within the U.S. That is, you need to “transport” your experience into your NIW proposal. Create a draft with specific areas for the reviewer/supporter to include their CV summary, attest to/witness your experience, and conclude with a recommendation based on your contributions within the country where your achievements took place, for the national interest of the U.S. This final point requires that you yourself demonstrate how your contribution can be relevant to the geographic and/or professional area of your proposed work in the U.S.

And remember: each letter needs to be unique and personal, incorporating distinct elements from each of your achievements/contributions as seen by the evaluator/supporter.

## SECTION 3.5: ORGANIZATION AND REVIEW OF DOCUMENTATION

Organize all documentation clearly and concisely, ensuring that nothing essential is left out. Review each document thoroughly to avoid errors or omissions.

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

Careful organization and review of the documentation are essential for the petition to be successful. A well-organized and reviewed petition demonstrates professionalism and seriousness, which can positively influence the immigration officer's decision.

### 1. Initial Organization:

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

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

- **Identification of Required Documents:** Begin by identifying all documents needed for your EB-2 NIW petition. This includes proof of your exceptional ability, contributions to the field, and evidence of national interest. Create a complete list of these documents.
- **Organization by Categories:** After identifying the necessary documents, classify them into logical categories. For example, you may have one category to prove your exceptional ability, another to show your previous contributions in the field, and another for documents related to national interest. This helps organize the documents clearly and facilitates review.

- **Document Numbering:** Assign numbers to each document according to your checklist. For example, the first proof of exceptional ability document can be numbered as "Document 1." This helps with cross-referencing and ensures no document is omitted.
- **Document Storage:** For physical documents, keep copies organized in labeled folders or envelopes. Make sure each folder is clearly labeled with the category name and corresponding document number. For digital documents, create folders in your file system with descriptive labels such as "Proof of Ability" and "Previous Contributions."
- **Detailed Checklist:** Create a detailed checklist that enumerates all documents required for the petition. This list should include clear descriptions of each document and its purpose. This checklist is a crucial tool to ensure no document is forgotten.

### 2. Requirement Verification:

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

Requirement verification is a critical step to ensure your petition meets all criteria for the EB-2 NIW. Here are the main guidelines:

- **Compliance with EB-2 NIW Criteria:** Ensure that each document included in the petition complies with the established criteria for EB-2 NIW. This involves meeting the requirements for exceptional ability, contribution to the field, and national interest.
- **Validity of Dates and Deadlines:** Check that the dates in your documents are current and within allowed deadlines. For example, ensure that diplomas, certifications, and reference letters are not expired.
- **Authentication and Translation:** If any document is in a language other than English, and authenticated in your country of origin, such as by a notary, make sure it has been properly translated and that the authentication is also properly translated. This is essential for the

immigration officer to understand the content correctly. Translations do not need to be sworn but must be certified as translated by a translator fluent in English.

- **Relevance and Pertinence:** Verify that all documents included are relevant to your EB-2 NIW petition. This means each document should contribute directly or indirectly to meeting the criteria for exceptional ability, contribution to the field, and national interest.
- **Excluded Documents:** Remove any document that is not relevant or necessary for the petition. Unnecessary documents can complicate review and hinder the process.

### 3. Checklist:

Create a detailed checklist enumerating all documents required for the petition, along with a brief description of their content.

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

- **Creating the Checklist:** Start by creating a detailed list of all documents and requirements needed for the petition. This can include proof of exceptional ability, contributions to the field, and national interest. The list should be comprehensive and specific.
- **Document Description:** For each item in the checklist, include a clear description of the required document. This helps avoid ambiguities and ensures you know exactly what needs to be presented.
- **Order and Numbering:** Organize the checklist in a logical order that corresponds to the organization of your documents. For example, if you grouped your documents by category (such as exceptional ability, contribution, and national interest), the list should follow the same order. Also, assign numbers to each item on the list for easy cross-referencing.

## EB-2 NIW – Complete Guide

- **Completion Markings:** As you gather and prepare each document, mark the corresponding item on the checklist as "completed." This helps track progress and ensures nothing is omitted.
- **Updates and Revisions:** The checklist should be reviewed regularly to ensure all documents are up-to-date and comply with EB-2 NIW requirements. Make adjustments as needed.
- **Quick Reference:** The checklist serves as a quick reference during the preparation and review process. It helps avoid omitting essential documents.

### 4. Content Review:

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

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

- **Accuracy Verification:** Thoroughly review all documents to ensure information is correct. This includes dates, names, identification numbers, and other details. Any error can adversely affect your petition.
- **Relevance and Pertinence:** Ensure each document included is relevant to your EB-2 NIW petition. All documents should contribute directly or indirectly to meeting the criteria for exceptional ability, contribution to the field, and national interest.
- **Clarity and Coherence:** Check that the language used in the documents is clear and cohesive. Avoid excessive technical jargon that may be difficult for the immigration officer to understand. Ensure the narrative is coherent and logical.

- **Formatting and Style:** Ensure that document formatting complies with guidelines. Use a clear and professional writing style. This includes legible fonts, adequate spacing, and visual organization.
- **Solid Evidence:** Ensure that all evidence presented is solid and supports your claims. This can include certificates, awards, publications, testimonials, among others. Documents must be reliable and convincing.
- **Comprehensive Conclusion:** Verify that your petition includes a comprehensive conclusion summarizing the key points of your qualification for EB-2 NIW. This helps the immigration officer quickly understand why you meet the criteria.
- **Third-Party Review:** It is highly recommended that you have an experienced immigration attorney or a professional with experience in EB-2 NIW petitions review your materials. A third-party review can identify errors or areas for improvement that might otherwise go unnoticed.

### 5. Consistency in Support Letters:

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

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

- **Content Standards:** Support letters should follow a consistent standard in terms of content. This means all letters should address the same criteria, such as exceptional ability, contribution to the field, and national interest.
- **Aligned Statements:** Support letters should include statements that are aligned with the overall narrative of your petition. They should reinforce the qualifications and contributions you claim in your petition.

- **Supporter Testimonials:** It is important that supporters provide testimonials consistent with the information in your petition. They should solidly back up your claims.
- **Writing Style:** Maintain a consistent writing style across support letters. This includes using professional language, avoiding contradictions, and ensuring all letters follow a similar structure.
- **Approach to Criteria:** Support letters should specifically address how you meet EB-2 NIW criteria. Each supporter should explain why they consider your qualifications exceptional and how your contribution is of national interest.
- **Formatting Consistency:** Besides content, the formatting of support letters should also be consistent. This includes elements such as header, signature, date, and overall letter format.

### 6. Personal Data Protection:

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

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

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

- **Secure Storage:** Keep personal information stored securely. For physical documents, use locked cabinets or safes. For digital documents, protect them with passwords and appropriate security systems.
- **Secure Disposal:** When personal information is no longer needed, ensure it is securely disposed of, either by destroying physical documents or deleting digital files.
- **Written Authorization:** If necessary, obtain written authorization from involved parties to collect and use their personal information. This is particularly important for reference letters and testimonials.
- **Legal Compliance:** Be aware of relevant personal data protection laws in your jurisdiction and comply with all applicable regulations.
- **Online Encryption and Security:** If sharing personal information electronically, ensure the communication is secure and encrypted to protect data during transfer.

### 7. Third-Party Review:

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

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

- **Experienced Professional:** It is highly recommended that you involve an experienced immigration attorney in reviewing your petition. Attorneys experienced with EB-2 NIW petitions understand the specific criteria and requirements of this visa type.
- **Professionals in the Same Field:** If possible, involve professionals or experts from the same field. They can provide valuable insights regarding the relevance and accuracy of the information included in the petition.

- **Detailed Review:** Third-party review should be detailed and thorough. This involves checking all documents, statements, support letters, and evidence to ensure compliance with EB-2 NIW criteria.
- **Constructive Feedback:** Reviewers should provide constructive feedback on areas that can be improved in the petition. This may include suggestions to improve clarity, cohesion, and strength of the case.
- **Consistency Check:** Reviewers should ensure all parts of the petition, including support letters, testimonials, and documents, are consistent and aligned with the overall petition strategy.
- **Legal Review:** An immigration attorney will review the petition from a legal perspective to ensure all requirements are met and that there are no legal issues.
- **Compliance with Deadlines:** Ensure that third-party review is completed within established deadlines to avoid delays in the immigration process.

### 8. Document Backup:

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

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

- **Physical and Digital Copies:** Make both physical and digital copies of all relevant documents. This includes support letters, proof of exceptional ability, contribution to the field, and national interest, as well as any other necessary documentation.
- **Secure Storage:** Store physical copies of documents in a secure location, such as a filing folder or safe. Ensure they are protected against damage such as moisture or fire.

- **Document Scanning:** Scan all documents to create digital copies. This facilitates quick access and electronic sharing if needed.
- **Cloud Storage:** Consider storing digital copies in secure cloud storage services, such as Google Drive, Dropbox, or Microsoft OneDrive. This provides access from anywhere with an internet connection.
- **Folder Organization:** Keep digital copies organized in clearly named and categorized folders. This helps locate documents quickly when needed.
- **Password Protection:** If storing documents on devices or digital services, protect them with strong passwords. This helps keep confidential information secure.
- **Regular Updates:** Ensure backup copies are updated as new documents or relevant information are added to the petition. This prevents data loss or missing essential information.
- **Backup Redundancy:** Consider having an additional backup of digital copies on an external storage device, such as an external hard drive. This provides an additional layer of security.

### 9. Deadlines and Submission:

Be aware of petition submission deadlines and have a clear plan for delivering the documents.

Deadline and submission management is essential to ensure your petition is filed according to immigration regulations and within established deadlines. Here are the main guidelines related to this aspect:

- **Deadline Calendar:** Create a detailed calendar listing all relevant deadlines throughout the preparation and submission process. This includes dates for document collection, reviews, translations, signatures, among others.

## EB-2 NIW – Complete Guide

- **Evaluate Deadlines:** Carefully evaluate deadlines set by immigration authorities, such as USCIS. Make sure you understand specific EB-2 NIW deadlines and any changes that may occur.
- **Early Preparation:** Start the petition preparation process early. This allows enough time to collect all documents, review them, obtain translations, request support letters, and conduct third-party reviews.
- **Document Checklist:** Maintain a detailed checklist of all documents needed for the petition. Check each item as it is collected and reviewed.
- **Communication with Third Parties:** If working with an immigration attorney, translators, or other professionals, maintain clear and regular communication about deadlines and submissions.
- **Early Submission:** Submit your petition ahead of the deadline to ensure it arrives on time. Consider postal or delivery service processing times.
- **Delivery Confirmation:** Request delivery confirmation from the postal or delivery service to ensure your petition was received by immigration authorities.
- **Status Monitoring:** After submission, regularly monitor the status of your petition to ensure it is progressing as expected.

### 10. Physical and Digital Organization:

If submitting physical documents, organize them neatly in folders and keep a well-organized digital copy as backup.

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

Physical Organization:

- **Filing Folders:** Use physical filing folders to store documents, support letters, evidence, and physical copies of your petition. Label folders clearly and categorize them by document type.
- **Dividers:** Consider using dividers within folders to separate different sections of your petition. This makes it easier to locate specific documents when needed.
- **Certified Copies:** Keep certified copies of important documents, such as academic certificates, diplomas, and recommendation letters, in separate and protected folders.
- **Safe or Secure Location:** Store important physical documents, such as original petitions and identification documents, in a safe or secure location to protect them from damage, fire, or theft.

Digital Organization:

- **Electronic Folders:** Create electronic folders on your computer or cloud storage for each document category. Name folders descriptively.
- **File Naming:** Give meaningful names to files so that their content is easily identifiable. Use consistent naming conventions.
- **Document Scanning:** Scan all relevant documents and store organized digital copies in electronic folders. This facilitates access and sharing of information.
- **Regular Backup:** Regularly back up digital copies on external devices or cloud storage services. Ensure your backups are up to date.
- **Digital Security:** Protect your digital copies with passwords and encryption, especially if they contain sensitive information.

## 11. List of Attached Documents:

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

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

- **Comprehensive Documentation:** The attached documents list should be comprehensive and list all documents and evidence being submitted as part of the petition. This includes support letters, diplomas, certificates, resume, publications, among others.
- **Logical Order:** Organize the list of documents in a logical order, preferably following the order in which the documents are physically attached to the petition.
- **Page Numbering:** Be consistent in numbering document pages and clearly indicate the number of pages for each item on the list. This helps avoid confusion and facilitates locating specific documents.
- **Clear Descriptions:** Provide clear and concise descriptions for each document. This should include the document title, date, author (if applicable), and a brief description of the content.
- **Cross-References:** If there are cross-references between documents, mention them in the attached documents list. This helps connect relevant information.
- **Evidence of Criteria Compliance:** Ensure the list includes documents demonstrating compliance with all eligibility criteria for EB-2 NIW, such as exceptional ability, contribution to the field, and national interest.
- **Signature and Date:** At the end of the list, add your signature and the date to confirm all documents are attached and correctly listed.

- **Double-Check:** Before submitting the petition, double-check that all listed documents are indeed attached. This helps avoid submitting an incomplete petition.

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

### 12. Technical Guidelines for Final Assembly:

- **Exhibit Cover Page:** Before each attachment, insert a simple sheet with the “Exhibit” number and document title. This prevents the officer from getting lost in a large volume of papers.
- **Highlights in Extensive Documents:** In long reports or articles, use a text marker (highlighter) only on sections that prove your thesis. USCIS in 2026 recommends that the officer should not need to “hunt” for evidence.
- **Continuous Page Numbering:** In addition to the document’s own numbering, consider a footer numbering that runs from the beginning to the end of the entire petition package.

## SECTION 3.6: LEGAL REVIEW OF THE PETITION

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

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

### 1. Hiring an Immigration Attorney:

- Consult an experienced immigration attorney: It is highly recommended to hire an immigration attorney specialized in EB-2 NIW petitions. This professional will understand the legal requirements and the process in detail.

### 2. Petition Review:

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

### 3. Accuracy Verification:

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

### 4. Support Letters:

- Review of support letters: It is very important that the support letters are consistent with your petition and meet the EB-2 NIW criteria regarding the robustness of their content, providing the best possible support for your petition. An immigration attorney experienced in the EB-2 NIW process can be essential for a detailed evaluation of each letter and suggest the necessary adjustments to strengthen your case.

### 5. Signature and Submission:

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

When opting for self-petitioning (Self-Petitioner), make sure that all signatures on forms I-140 and ETA-9089 are original (black or blue ink), according to the current document integrity guidelines. Legal review of the petition is crucial to ensure that all requirements and regulations are met. Hiring an experienced immigration attorney is highly recommended, as they have the knowledge and experience to guide you through the entire process, maximizing your chances of success.

## Chapter 4: Practical Aspects

The process of obtaining the EB-2 NIW (National Interest Waiver) visa is complex and requires detailed preparation of various documents and evidence proving that the candidate meets the necessary requirements. This chapter will cover the practical aspects involved in preparing your case, including diploma validation, academic evaluation, expert opinion letters, recommendation letters, business plan, or professional plan. Each of these elements plays a crucial role in demonstrating that your work is of national interest and that you possess the necessary qualifications to make a significant contribution to the United States.



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## Chapter 5: Pathways to Permanent Residency

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

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

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

1. **Adjustment of Status:** Aimed at individuals who are already physically present in the United States in a valid immigration status and wish to change their status to permanent resident without having to leave the country. This process is conducted by the United States Citizenship and Immigration Services (USCIS) and offers a practical alternative for those who are already living in the U.S. territory.

2. **Consular Process:** Indicated for those who are outside the United States or prefer to carry out the procedure through an American embassy or consulate abroad. In this case, the U.S. Department of State is responsible for conducting the process until the immigrant visa is issued.

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

## 5.1. ADJUSTMENT OF STATUS

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



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## 5.2. CONSULAR PROCESSING

Consular processing is the procedure for applying for an immigrant visa (Green Card) through a U.S. diplomatic mission abroad.

The choice between immigration pathways depends on the applicant's physical location. If you are outside the United States, your case must proceed through consular processing, meaning the final stage will be conducted by the U.S. Embassy or Consulate with jurisdiction over your place of legal residence.

Unlike Adjustment of Status (AOS), which allows the applicant to remain in the U.S. while awaiting a decision, consular processing requires the applicant to remain abroad until the immigrant visa is formally approved and issued in the passport.

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## 5.3: VISA X ADMISSION CLASS X IMMIGRATION STATUS

### 1. Visa

What is it?

A visa is an authorization issued by a U.S. embassy or consulate abroad that allows the holder to travel to a U.S. port of entry (airport, land border, etc.) and request admission from a CBP officer. It acts as an "entry key" and, by itself, does not guarantee automatic admission into the United States.

Key characteristics:

- The visa is stamped or attached to the passport.
- It indicates the category (e.g., F-1 for students, B-2 for tourists) and the validity period for use.
- There are two main types:
  1. Non-Immigrant Visas: For temporary stays (e.g., B1/B2, F-1, H-1B, O-1).
  2. Immigrant Visas: For those with an approved petition for permanent residency (e.g., EB-2 NIW visas via consular processing).

Important:

A visa is only required to enter (or re-enter) the U.S. Once inside, your legal status in the country governs your stay, not the visa stamp in your passport.

## 2. Admission Class

What is it?

The admission class is the specific legal category under which an individual is admitted to the U.S. at the moment they cross the border. It is determined by a CBP (Customs and Border Protection) officer based on the visa presented and the declared intent.

Key characteristics:

- It is recorded on Form I-94 (Arrival/Departure Record), which is now mostly electronic.
- The I-94 specifies the category (e.g., F-1) and the authorized length of stay (specific date or "D/S" – Duration of Status).

Difference from a visa:

The visa allows you to request entry; the admission class sets the rules for your stay.

## 3. Immigration Status

What is it?

Immigration status refers to a foreign national's legal condition while remaining in the U.S. It determines what you are allowed or not allowed to do (work, study, travel).

Key characteristics:

- Status must be maintained according to the conditions of the admission class. For example, if you enter on a B-2 (tourist) visa and

start working, you violate your status—even if your tourist visa in the passport is still valid for 10 years.

- **Maintaining Status:** It is the immigrant’s responsibility to follow the rules (e.g., an F-1 student must maintain full-time enrollment). Losing status can result in inadmissibility and difficulties in future Green Card applications.

Summary of Differences

Aspect	Visa	Port of Entry Classification	Immigration Status
Definition	Key to travel to the U.S.	Category at entry	Legal condition inside the U.S.
Issued by	U.S. Consulate/Embassy (DOS)	CBP Officer at the border	USCIS or CBP
Purpose	Request admission	Define rules at entry	Regulate stay
Example	F-1 stamp in passport	F-1 admission on I-94	Active F-1 while studying

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

If you are an employment-based (EB) preference applicant, such as in the case of EB-2 NIW, the Child Status Protection Act (CSPA) is the legal mechanism that allows children of principal applicants who turn 21 while the process is pending to still immigrate as dependents (“children” for immigration purposes).

To qualify, you must calculate your CSPA age by subtracting the number of days your petition was pending (USCIS processing time) from your actual age on the date an immigrant visa becomes available to you. It is a mandatory condition

that the child remains unmarried at the time of obtaining the Green Card in order to retain eligibility.

The formula for calculating CSPA age is:

Age at the time the visa becomes available – Pending time = CSPA age

Example:

You are 21 years and 4 months old when USCIS considers an immigrant visa available for you. Your I-140 petition was pending for exactly 6 months.

The CSPA age calculation will be:

*21 years and 4 months – 6 months = 20 years and 10 months.*

Visa availability date

Determining when a visa is considered available is the most critical step, and it underwent an important update in February 2023 (currently in effect). The visa availability date is considered the later of these two dates:

- The date the petition (I-140 or I-130) was approved; or
- The first day of the month when the visa becomes available, as shown in the U.S. Department of State (DOS) Visa Bulletin.

Important Update (Table B Rule): Previously, only the Final Action Dates chart (Table A) was used for this calculation. Currently, USCIS uses the Dates for Filing chart (Table B) to determine visa availability for CSPA age calculation purposes, provided USCIS designates that the chart can be used for Adjustment of Status (Form I-485) filings in that specific month. This allows the dependent’s age to “freeze” much earlier, protecting families from retrogression.



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## 5.5: VISA BULLETIN AND PRIORITY DATE

In this section, we will explain what the Visa Bulletin is and how it directly influences your immigration process. We will address the importance of the Priority Date and how to determine the exact moment when you will be able to move forward with Adjustment of Status or a consular interview.

Access the official and updated Visa Bulletin:

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

### 1. Visa Bulletin:

The Visa Bulletin is a monthly publication issued by the U.S. Department of State. Because Congress imposes annual limits on the number of Green Cards issued, this document serves to organize the “waiting line.” It informs the availability of visa numbers for categories such as EB-2 NIW.

The bulletin is divided into employment-based categories and geographic areas. For Brazilians, the column to be observed is generally “All Chargeability Areas Except Those Listed,” unless the applicant was born in countries with specific backlogs (such as China or India).

We will work with the two fundamental tables for your process:

Table A – Final Action Dates: this is the final date on which your Green Card application may be processed.

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

USCIS determines that the date in Table A must be used for adjustment of status applications; however, when it determines that there are more visas than applicants, it will indicate in a given month the use of Table B (Dates for Filing) for this purpose.

It is important to always verify which table must be used on the website:

## EB-2 NIW – Complete Guide

<https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>

For the Consular Process: this is the date from which your interview may be scheduled, provided that your case is “Documentarily Qualified” (DQ), which is a classification given to cases in which the National Visa Center (NVC) has received all required information and documents.

Example of Table A in the January 2026 Visa Bulletin

<b>Employment-based</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
1st	C	01FEB23	01FEB23	C	C
2nd	01APR24	01SEP21	15JUL13	01APR24	01APR24
3rd	22APR23	01MAY21	15NOV13	22APR23	22APR23
Other Workers	01SEP21	08DEC18	15NOV13	01SEP21	01SEP21
4th	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
Certain Religious Workers	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
5th Unreserved (including C5, T5, I5, R5, NU, RU)	C	15AUG16	01MAY22	C	C
5th Set Aside: Rural (20%, including NR, RR)	C	C	C	C	C
5th Set Aside: High Unemployment (10%, including NH, RH)	C	C	C	C	C
5th Set Aside: Infrastructure (2%, including RI)	C	C	C	C	C

Note, in this example, that the cut-off date for EB-2, which is an employment-based, second-preference visa, is 01APR24. That is, only EB-2 cases with a pending Form I-485 and whose Form I-140 has a priority date earlier than April 1, 2024, and is duly approved, in the case of adjustment of status, may have their Green Card application adjudicated. Likewise, only cases that are “DQ,” whose Form I-140 has a priority date earlier than April 1, 2024, and is duly approved, for consular cases, may have their interview scheduled.

When USCIS determines Table A as the reference instead of Table B, the same logic and rule apply to the filing of Form I-485 and/or Forms I-765 and I-131 (which may only be filed together with the I-485 or afterward, as long as there is a pending I-485, upon payment of the required fees).

Table B – Dates for Filing: this is the opening date that allows you to submit your Green Card application, together with the I-140, or after its approval, if it was not possible to file earlier.

For the Adjustment of Status (AOS) process, this is the date that defines when you may submit your Form I-485 to USCIS. The major benefit of this table is allowing the applicant to file the residency application (and obtain the benefits of EAD and Advance Parole) months or even years before a visa is actually available for final approval (Table A).

However, there is a crucial rule: USCIS decides monthly whether it will accept Table B for new filings. If the agency determines that the volume of pending applications is already high enough, it may indicate that only Table A will be accepted for filings in that month.

It is important to always verify which table must be used on the website:

<https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>

For the Consular Process, in theory, this would be the date on which the NVC (National Visa Center) would open your case for fee payment and document submission. In practice, the NVC has been more flexible, often initiating processing as soon as the I-140 is approved, regardless of Table B, so that the applicant reaches “Documentarily Qualified” (DQ) status as early as possible.

The Objective of This Flexibility: Since the process of collecting and reviewing documents (certificates, exams, etc.) may take months, the NVC prefers that you are already “ready in line” (DQ). Thus, at the exact moment your priority date becomes current in Table A (Final Action Dates), they only need to schedule the interview, without losing time on documentary bureaucracy.

Example of Table B in the January 2026 Visa Bulletin

<b>Employment-based</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
1st	C	01AUG23	01AUG23	C	C
2nd	15OCT24	01JAN22	01DEC13	15OCT24	15OCT24
3rd	01JUL23	01JAN22	15AUG14	01JUL23	01JUL23
Other Workers	01DEC21	01OCT19	15AUG14	01DEC21	01DEC21
4th	15MAR21	15MAR21	15MAR21	15MAR21	15MAR21
Certain Religious Workers	15MAR21	15MAR21	15MAR21	15MAR21	15MAR21
5th Unreserved (including C5, T5, I5, R5)	C	22AUG16	01MAY24	C	C
5th Set Aside: (Rural: NR, RR - 20%)	C	C	C	C	C
5th Set Aside: (High Unemployment: NH, RH - 10%)	C	C	C	C	C
5th Set Aside: (Infrastructure: RI - 2%)	C	C	C	C	C

Note, in this example, that the cut-off date for EB-2, which is an employment-based, second-preference visa, is 15OCT24. That is, only cases whose Form I-140 has a priority date earlier than October 15, 2024, provided it has not been denied, in the case of adjustment of status, may have their Form I-485 filed. At this time, you may also choose to file Forms I-765 (Employment Authorization) and I-131 (Travel Document).

It is important to note that, under current rules, these forms have separate filing fees and are no longer fee-exempt when filed with the I-485. Concurrent filing continues to be recommended only to save processing time and to ensure work and travel benefits while the Green Card is being adjudicated.

As stated earlier, by the “rule,” although this is not what we are seeing in “practice,” this would be the reference date for the NVC to accept fee payments and the submission of your documents for a case whose I-140 has a priority date earlier than October 15, 2024, and is duly approved, for consular cases; and after approval of your documents, your case would become “DQ.” Some cases may receive notice of this rule to wait for availability before submitting documents, o

2. Priority Date:

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

For employment-based processes that have a “sponsor,” such as EB-3, the priority date is the date on which your Labor Certification (LC) is filed with the DOL. This date appears in the header of your Form I-140 filing receipt (Form I-797C).

For employment-based processes that do not have a “sponsor,” such as EB-2 NIW, your priority date is the filing date of your Form I-140. To verify this date accurately, check the header of the receipt sent by USCIS (Form I-797C), where it states “Priority Date.”

Department of Homeland Security U.S. Citizenship and Immigration Services		Form I-797C, Notice of Action	
<b>THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.</b>			
NOTICE TYPE Receipt	NOTICE DATE January 17, 2018		
CASE TYPE I-130, Petition for Alien Relative	USCIS ALIEN NUMBER		
<b>PRIORITY DATE</b> <b>January 10, 2018</b>		RECEIVED DATE January 10, 2018	PAGE 1 of 1
		PREFERENCE CLASSIFICATION 201 B INA SPOUSE OF USC	DATE OF BIRTH
PAYMENT INFORMATION:			

- **Current Status (Current):** If the date in the Visa Bulletin table is listed as “C” for “Current,” it means that visa numbers are available for all petitions with priority dates earlier than that date.
- **Retrogression:** If the priority date moves backward, there may be a delay in the processing of petitions. This can occur due to high demand in a particular category or due to annual visa limitations. When this happens, the cut-off date is published in the Visa Bulletin.

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## 5.6: PROCESSING FEES AND ASSOCIATED COSTS

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

USCIS periodically adjusts its fees. Since the major adjustment that occurred in 2024, the costs have become more specific by form and category. The most up-to-date information on form fees can be found on the official All Forms page - <https://www.uscis.gov/forms/all-forms>.

You can use the USCIS Fee Calculator (<https://www.uscis.gov/feecalculator>) to determine the exact filing and biometric services fees for any form processed by the agency.

For a complete list of all fees, consult the USCIS Fee Schedule (G-1055): <https://www.uscis.gov/g-1055>

In addition to mandatory government fees (USCIS and Department of State), an immigration process involves various other costs that need to be factored into your budget:

- Attorney fees, if you hire a specialized law firm;
- Mentoring fees, if you opt for strategic guidance;
- Medical exams and vaccinations (performed by consular- or USCIS-approved physicians);
- Travel and/or lodging expenses (especially for the consular interview stage);
- Certified translations, as it is recommended not to do your own translations—even if fluent—to ensure document impartiality and acceptance;
- Educational Credential Evaluations (Equivalency), to prove that your Brazilian diplomas equate to the required U.S. degree levels.

### Summary of Main Fees:

It is important to note that for EB-2 NIW, fees vary depending on whether the applicant is an individual or has a sponsor. For NIW (Self-Petition), the main fees include:

1. Form I-140 (Immigrant Petition): Base filing fee.
2. Asylum Program Fee: An additional fee introduced in 2024, applicable to employment petitions (for NIW Self-Petitioners, the reduced amount for small entities/individuals is generally paid).
3. Premium Processing (Optional): To obtain a response within 45 business days.
4. Adjustment of Status (I-485): Includes the form fee and, now mandatorily, separate fees for I-765 (Employment Authorization) and I-131 (Travel Document), if you wish to obtain these benefits while awaiting the Green Card.

### How to pay USCIS filing fees

The way you pay your filing fees (including biometric services fees and other fees) will depend on your location and method of submission.



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## Chapter 6: Immigration Petition (I-140)

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

Below are the general steps for completing Form I-140:

Access the Form and Instructions:

Visit the official USCIS website (<https://www.uscis.gov/i-140>) and download the most recent Form I-140, as well as read the corresponding instructions.



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

This form is used if you are present in the United States and wish to adjust your nonimmigrant status to permanent resident after Form I-140 approval, or before its approval, provided they are filed concurrently (Concurrent Filing), if permitted by the Visa Bulletin (<https://travel.state.gov/visa-bulletin>).

You will also need to pay the filing fee for Form I-485 and the biometric services fee (if applicable to your age group). Note that the 'Asylum Program Fee' is a fee tied to the worker petition (I-140); however, for self-petitioners (as in the NIW case), the amount of this specific fee is zero.

Remember that these instructions may be out of date after the publication/revision date of this ebook (as specified in the table of contents), so always check the official USCIS website for the most recent version of the form and instructions. Below are the general steps for completing Form I-485:

Access the Form and Instructions:

Visit the official USCIS website (<https://www.uscis.gov/i-485>) and download the most recent Form I-485, as well as read the corresponding instructions.



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## Chapter 8: Work Authorization (I-765)

If you wish to work in the U.S. while awaiting a decision on your adjustment of status petition (Form I-485), you may request an Employment Authorization Document using Form I-765.

Remember that these instructions may be out of date after the publication/revision date of this ebook (as specified in the table of contents), so always check the official USCIS website for the most recent version of the form and instructions.

Below are the general steps for completing Form I-765:

Access the Form and Instructions:

- Visit the official USCIS website (<https://www.uscis.gov/i-765>) and download the latest I-765 form as well as read the corresponding instructions.



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## Chapter 9: Travel Authorization (I-131)

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

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

Access the Form and Instructions:

- Visit the official USCIS website (<https://www.uscis.gov/i-131>) and download the latest I-131 form as well as read the corresponding instructions.



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## Chapter 10: Immigrant Visa Application (DS-260)

If you are outside of the United States and plan to apply for an EB-2 immigrant visa through the consular process, you will need to fill out Form DS-260. This form is used to apply for an immigrant visa and must be completed with accurate and complete information.

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

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

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



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

Although this is a form that was previously only required in work-based visa processes that had an employer as the sponsor of the petition ("sponsor"), the new USCIS rule requires you to submit this form for an EB-2 NIW, together with its Form I-140, since the petitioner is the sponsor of its petition.

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

### Understanding the work certification requirement

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

### How to access and fill out the form

To get the appropriate form, you can visit the official website of the Department of Labor and search for "Permanent Employment Certification Form." Download the form and, crucially, make sure you download it from an official US Government website.

<https://www.dol.gov/agencies/eta/foreign-labor/forms>

 Learn more in the full version of the book

## Chapter 12: Questions & Answers

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

What does NIW stand for?

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

Does EB-2 NIW lead to a Green Card?

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

What are the differences between the regular EB-2 visa and the EB-2 NIW?

For an ordinary EB-2 case, a U.S. employer needs to act as the petitioner in the case, and the petitioner (employer) needs to obtain a labor certificate before filing Form I-140 for the alien. The foreign worker is called a "beneficiary". The petition needs to establish the qualifications of the alien (an individual with an advanced degree or exceptional ability). For an EB-2 NIW, the alien can be their own petitioner. The petition not only needs to establish the alien's qualifications under EB-2, but also demonstrate that the qualifications satisfy the national interest exemption requirements (three "prongs" in the Dhanasar decision issue). Generally, it is more difficult to obtain immigration benefit under the EB-2 NIW than ordinary EB-2 due to the requirements for "national interest".

## Who is eligible for NIW?

To be qualified for EB-2 NIW, one must first meet the requirements of the EB-2 (Employment-Based Immigration Second Preference) category, which can be satisfied in one of two ways:

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

Is a Certification of Labor (PERM/LC) required prior to EB-2 NIW I-140 filing?

No. Labor certification is not required for the I-140 petition at the EB-2 NIW. The EB-2 NIW does not require labor certification.

Is a job offer required for EB-2 NIW?

No. No job offer is required

What are the main advantages of applying to EB-2 NIW?

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

Is EB-2 NIW hard to approve?

A foreign national who wishes to apply for an EB-2 NIW must demonstrate that his or her qualifications are significant enough for the "National Interest". The challenge for the petitioner is to establish that the exemption or waiver of a job offer will be in the national interest. Each case will be judged on its own merits. If a beneficiary is qualified, the chance of success depends largely on how the case is presented. If the evidence is relevant and well presented, and the argument is made persuasively, there is a good chance that the case will be approved. But each case is unique and approval depends on the discretion of the immigration officer and not all officers judge cases in the same way.

What standard does USCIS use to determine an EB-2 NIW?

The Matter of Dhanasar decision (released on 12/27/2016) set new standards for obtaining the EB-2 NIW. The AAO (Office of Administrative Appeal) considered that three "prongs" must be met to be considered of "National Interest":

1. The effort proposed by the foreigner is of substantial merit and national importance,
2. The foreigner is well placed to advance the proposal presented, and

3. On the other hand, it would be beneficial to waive the obligation of labour certification in favour of this proposal.

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

Substantial merit:

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

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

National Importance

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

1. A detailed description of the proposed development and why it is of national importance,
2. Documentary evidence supporting the Petitioner's statements and establishing national significance. Such evidence must demonstrate the prospective impact of the venture, and may consist of, but is not limited to, evidence demonstrating the proposed effort:
  - i. It has national or even global implications in a given area;
  - ii. It has significant potential to employ U.S. workers or has other substantial positive economic advantages.

## EB-2 NIW – Complete Guide

- iii. It will vastly improve social well-being or cultural or artistic enrichment; and
- iv. It impacts an issue that a government entity has described as being of national importance or is the subject of national initiatives.

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

An EB-2 NIW petition needs to establish that the alien is well-positioned to promote the proposed effort – that he has a strong position in his field and can reasonably be expected to continue his work successfully within the U.S. Examples of evidence can be detailed through expert letters demonstrating the U.S. government's interest in the petitioner's research, documentation that the alien has played a significant role in projects funded by government grants, and evidence of the educational background, skills, knowledge, experience, and other notable achievements in their field, including notable associations or media reports.

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

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

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

How many publications and citations are enough to meet the EB-2 NIW requirements?

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

Can I apply for the EB-2 NIW category and another visa category simultaneously?

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

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

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

Can an EB-2 NIW petition be withdrawn?

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

If my EB-2 NIW petition is denied, how long do I have to wait to file another application under EB-2 NIW or other categories again?

The law does not restrict the amount of time you can file your EB-2 NIW petition after your EB-2 NIW petition is denied previous filing. A previously denied petition does not prevent you from submitting another petition subsequently, regardless of the classification in question. However, unless your circumstances have been improved, it is not advisable to simply file a similar petition again. Although, in some cases, as the adjudication will most likely be done by another immigration officer and may be interpreted favorably, still, if your process is "weak", there is a risk of a new denial. The ideal is to analyze

your denied process, the reasons for this denial and check if you really meet the points questioned and just need to improve your arguments.

How should I organize my petition?

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

1. Provide all necessary documentation and all evidence in the petition. A petition can be denied, immediately, without an RFE (Request For Evidence), when the initial basic requirements are not presented.
2. If you provide photocopies of documents, provide clear and legible copies. Never send original documents, as they will not be returned and may be destroyed
3. All documents in a foreign language must be submitted with a corresponding English translation. The English translation must be certified by a translator who has the competence to translate and must verify in writing that "the translation is truthful and in accordance with the best skills of the translator". Always send a copy of the document in the foreign language, along with the translation. Translations do not need to be sworn.
4. When submitting publications or quotations, try to highlight the petitioner's name where relevant so that it can be easily identified by the officer reviewing his or her case. It is not necessary to send the complete copy of a dissertation, thesis or research paper written by the foreign national, or one in which the foreigner's work has been cited. Include the title page and the part(s) that cite the works and the "works mentioned" or bibliography.
5. Tabulate and label the expositions and evidence at the bottom of the first page of each part of your process and provide a complete index of each part of your application, with the appropriate references. A well-organized display makes a good impression and facilitates the work of the officer who is analyzing your case and this will be a positive point for the analysis of your case.

What is a letter of recommendation?

A letter of recommendation is also called a letter of reference and is a letter written by an expert in the field of the foreign national or some individual otherwise with authority in an allied or related area. Letters of recommendation are essential in the EB-2 NIW petition. Given that judging officers are rarely experts in their field, one way to determine whether a foreign national qualifies for the standard set out in the ruling on the Dhanasar issue is to

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

Who do I contact for letters of recommendation for my EB-2 NIW petition?

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

What information should be included in letters of recommendation for an EB-2 NIW?

These points should be noted in a letter of recommendation:

1. **Recommender Qualifications:** A letter of recommendation needs to include the recommender's description. If the recommender comments on the foreigner's national or research achievements, a statement should be included in the support that establishes the qualifications of those individuals to judge the foreigner's work. It is recommended that the recommender write at least one paragraph with their professional resume to demonstrate their qualifications.

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

How many letters of recommendation are required for an EB-2 NIW?

There is no specific number of letters established by USCIS. Generally, it is suggested to include four to six letters of recommendation in an EB-2 NIW case.

What if I change jobs while my EB-2 NIW petition is pending?

Because you are the petitioner yourself and are not tied to a job offer, the change of employers should not affect the status of your case and the petition will remain active. However, your new position must continue to satisfy the requirements for the EB-2 NIW category and must not conflict with your area of practice, or your petition may be denied after an RFE (Request for Evidence).

Can an F-1 or J-1 student visa be visiting scholar petition for EB-2 NIW? Do I have to wait to apply for a Green Card after my graduation and change the visa to H-1B?

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

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

What is the actual difference between EB-2 NIW and EB1-A? Is it possible to submit both petitions at the same time?

The requirements in EB-2 NIW and EB1-A are different and the application preparation is significantly different between these two classifications. Successful EB-2 NIW cases are not limited to foreigners who have risen to the top in their field of expertise. Submitting materials in support of the petition that frames the case in the most favorable light will help its approval. For example, it is important for the petitioner to interpret his or her area of practice as narrowly as to maintain his or her credibility. By narrowing the frame of reference, the foreigner can be compared to a much smaller group of peers in the U.S. However, it should be noted that the AAO may be suspicious of a petition that interprets the area of practice too narrowly. The foreigner's area of specialization must be supported by abundant documentation. But once your I-140 is approved, there is no major difference between these two classifications for later I-485 application. It is possible to file two petitions, such as an EB-2 NIW and an EB1-A at the same time, as long as they are not contradictory and one does not invalidate the other. There is nothing stated in the law that prohibits multiple filings and cases must be tried independently.

If I have not published articles in journals within my area, can I still apply for the EB-2 NIW?

Yes, there is no specific requirement that you need to have articles published to apply or obtain approval of an EB-2 NIW petition, although in many cases publications would help improve the chances of approval, because they help to establish the original contribution and of authorship. One can further support the petition by providing evidence that satisfies the listed prongs by law. For example, if an entrepreneur can establish that their proposed venture has the potential to create a significant impact on the U.S. economy, the foreign national may still qualify under EB-2 NIW.

I am a holder of a J-1 subject to the two-year residency requirement in the foreign country. Can I apply for the EB-2 NIW category now and have my J-1 Waiver later?

The answer is yes, you can apply for the EB-2 NIW now and get the J-1 waiver later. Even with the I-140 approval, you are still subject to the two-year foreign residency requirement and must obtain the J-1 waiver before adjusting your status to permanent resident. You are not required to have a J-1 waiver before submitting an I-140 petition. The two-year alien residency requirement does not allow you to adjust J-1 status for permanent residency, but it does not preclude filing an I-140 application. In addition, you can prepare your I-140 and J-1 waiver simultaneously. If you receive I-140 approval before the J-1 waiver, you must wait for the J-1 waiver before submitting the I-485 petition for adjustment of status.

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

## Chapter 13: Final Message

The end of this guide highlights the ongoing commitment to the applicant's journey towards the EB-2 NIW (National Interest Waiver) visa. This process is challenging, but with dedication, deep understanding of the requirements, and the right guidance, it becomes an achievable journey. Pursuing the EB-2 NIW is not only a pathway to permanent residency in the United States, but also an opportunity to contribute significantly to the country.

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

We encourage readers to explore more resources, deepen their understanding of EB-2 NIW, and if questions arise, seek clarification from qualified professionals. This is a crucial chapter in their lives, and I am confident that with perseverance and knowledge, they will achieve their goals.

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

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

Remember that EB-2 NIW is quite subjective and discretionary. That is, the immigration officer is free to judge your case. And although he needs to justify a denial, the fact is that he can justify himself only by claiming that he does not believe in his proposal as being of interest to the country. Because it is something very abstract, it ends up giving a very large "power" to the officer. Therefore, it is extremely important that you understand the process, its requirements, do market research and present a solid proposal rich in details.

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

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

Good luck!

Ramon Rocha

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