UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Office of Business Liaison

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EMPLOYMENT-BASED PERMANENT RESIDENCE[1]

In 1990, Congress created a priority system for granting permanent residence to aliens based on employment skills. Annually, 140,000[2] immigration visas are available for principal aliens who qualify under the following five employment-based ("EB") preference categories:

FIRST	**"EB-1"**	**Priority Workers**	40,000 visas per year

- aliens of ***extraordinary*** ability in the sciences, arts, education, business, and athletics
- outstanding professors or researchers
- managers and executives subject to international transfer to the United States (US)

SECOND	**"EB-2"**		40,000 visas per year

- aliens of ***exceptional*** ability in the sciences, arts, or business
- advanced degree professionals

THIRD	**"EB-3"**		40,000 visas per year

- professionals with bachelor's degrees (not qualifying for a higher preference category)
- skilled workers (minimum two years training and experience)
- unskilled workers (maximum 10,000 visas available per year, of which 5,000 have been dedicated to adjustees under the Nicaraguan Adjustment and Central American Relief Act (NACARA)

FOURTH	**"EB-4"**	**Special Immigrants**, *including but not limited to*	10,000 visas per year

- **religious workers** a maximum of 5000 visas is set aside for religious vocational activities in the US of members of religious denominations that have bona fide nonprofit religions organizations in the US.

FIFTH	**"EB-5"**	**Immigrant Investors**	10,000 visas per year (3000 in targeted employment areas)

alien entrepreneurs whose enterprises will *directly* create 10 or more new jobs in the US; 3000 visas reserved for investors in target employment areas and 300 for Immigrant Investor Pilot Program

PROCEDURE

Step 1 ***Labor Certification*** In cases where immigration to the US will be based upon a US job offer, the employer is the **petitioner** and the prospective immigrant is the **beneficiary**. Labor Department Form ETA-750 (Parts A and B) must be filed by the employer with the state employment service in the state where the intending immigrant will be employed. In most cases where a job offer is involved, the petitioner must document in the ETA-750 submission that qualified US workers are not available, able, or willing to fill the position on which an EB petition is based. The Labor Certification is the document issued by the US Department of Labor to certify that the petitioner has met this standard. Once a Labor Certification is received, a priority date will be issued that will determine when an immigrant visa becomes available. **NOTE:** Labor Certification is not required for 1st, 4th, 5th, and some 2nd EB categories.

Step 2 ***INS Petition*** Once the Labor Certification is processed (if required), the employer or self-petitioning alien submits Form I-140 to the INS Service Center with jurisdiction over the geographical location where services will be rendered. Upon approval, provided that an immigrant visa is available, the beneficiary can apply for adjustment of status (if present in the US) or apply to a US consulate abroad for an immigrant visa.

Step 3 ***Consular processing or Adjustment of Status*** Aliens abroad who seek to enter the US as EB immigrants will apply to consulates abroad with their supporting INS documentation. Aliens already present in the US in nonimmigrant status may submit Forms I-485 (application for adjustment of status) and I-765 (application for work authorization based upon adjustment application) to local INS offices.

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[1] This bulletin will not cover immigration based on family relationship, diversity lottery, asylum, or refugee status.

[2] Annual limitations in numbers of the employment-based (EB) immigrant refer to principal aliens. Dependents are not subject to numerical limitations.

FIRST PREFERENCE
Priority Workers

Aliens with *extraordinary*[3] ability

REQUIREMENTS:

- Alien's **extraordinary** achievements in the sciences, arts, education, business, or athletics have resulted in sustained national or international status in the alien's field
- Alien intends to enter the US to work in the field in which he or she has earned extraordinary status
- INS finds that alien's admission as a permanent resident will substantially benefit the US

DOCUMENTATION

Aliens eligible for this category will have demonstrated a major achievement such as an internationally recognized award (e.g. Nobel Prize) **or *three*** of the following:

- lesser national or international award for excellence in the field of alien's intended US employment;
- membership in association(s) in alien's field that require members to have demonstrated outstanding achievements as judged by acknowledged experts;
- published material about the alien in major professional or trade publications;
- selection of alien to judge others in the same or allied field;
- original contributions of importance in the alien's field;
- publication under alien's name of scholarly articles in professional/trade publications or broadcast media;
- display of alien's work in artistic exhibitions;
- performance of leading roles for distinguished organizations or institutions;
- high salary or level or professional remuneration in relation to others in alien's field;
- commercial success in the performing arts (box office receipts, recordings, videos, etc.)

Outstanding Professors and Researchers

REQUIREMENTS

- Evidence of international recognition in area of academic specialty
- 3 years experience in teaching or research (includes graduate or post doctoral work, if qualifying)
- seeks entry for a tenure track teaching or comparable research position (of unlimited duration) at an institution of higher education or private research position for employer of demonstrated research accomplishments that employs more than 3 full-time researchers

DOCUMENTATION

International recognition can be demonstrated via evidence of ***two*** of the following:

- receipt of major prizes/awards for outstanding achievement
- membership in an association requiring outstanding achievement
- published material in professional publications written by others about applicant's work
- participation as a judge of the work of others
- original scientific research
- authorship of scholarly articles/books in the specialty area

Multinational Executives and Managers

REQUIREMENTS

- Meets ***qualifying employee*** standard under the L-1 nonimmigrant classification[4]
- Seeks to commence or continue US employment as a manager[5] or executive[6] with the foreign employer or US affiliate

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[3] **Extraordinary** ability means a level of expertise found only in that small percentage of persons who have risen to the very tops of their respective fields.

[4] Must be in current L-1a status or have worked for a continuous one out of the preceding three years abroad for the petitioning employer as a manager or executive.

[5] A ***manager*** *manages* the operational affairs of the organization as a whole, an operating division, or a major function. Management includes responsibility for personnel decisions affecting supervisory and professional personnel unless a function is managed. A functional manager must operate at a senior level.

[6] An ***executive*** directs management of the organization, a division, or a major function, including establishing goals and policies and exercising discretionary decision-making. An executive must be supervised by higher level executives, a board of directors, or stockholders.

SECOND PREFERENCE
Professionals with advanced degrees[7] or *exceptional* ability in arts[8], science, or business

SPECIAL FEATURES

- Labor certification required unless specialty occupation is pre-certified under the Labor Department's Schedule A[9].
- A petition submitted with Form ETA-750B and evidence supporting a ***national interest waiver***[10] will exempt the petition from the requirements of a job offer and labor certification.

REQUIREMENTS

Aliens holding advanced degrees

For a petition to qualify under the second preference as an ***advanced degree professional***, the position to be filled by the beneficiary must require an advanced degree or the equivalent. Adjudication of EB-2 petitions based on advanced degrees will first examine the requirements of the position (i.e. whether an advanced degree is required) and then whether the beneficiary has the credentials specifically required for that position[11]. ***Both criteria must be met***[12]**.**

Aliens of *exceptional* ability[13]

To demonstrate ***exceptional ability*** in the arts, sciences, or business, a petition must include a minimum of ***three*** of the following types of documentation relating to the field of exceptional ability:

- Official academic record demonstrating that alien has earned degree(s)
- Statement(s) from employer(s) demonstrating at least ten years of full-time experience
- License or certification for professional practice
- Salary or history of remuneration for services commensurate with that of a professional
- Membership in professional association(s)
- Recognition by peers or government/professional entities for achievements and contributions

THIRD PREFERENCE
Skilled workers[14], professionals[15], and other workers[16]

REQUIREMENT

Third preference petitions must be submitted by employers, based on job offers, and include labor certifications.

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[7] ***Advanced degree*** means an academic or professional degree beyond the baccalaureate. Five years of progressive, related, professional experience beyond a baccalaureate degree is equivalent to a master's degree. A doctoral degree must be awarded by a US or foreign academic institution.

[8] Includes athletes and entertainers.

[9] Individuals who meet standards for exceptional ability in the arts, sciences, or business will usually also meet standards for Schedule A, Group II and therefore be exempt from labor certification.

[10] The standards for ***national interest waiver*** were established in the INS Administrative Appeals Unit's 1998 precedent decision Matter of New York State Department of Transportation (NYSDOT). To qualify, an applicant must present evidence that (1) he or she is seeking employment in an area of substantial intrinsic merit (2) the proposed benefit to be provided by the applicant is national in scope and (3) the national benefit to be provided by the applicant outweighs the national interest in the labor certification process (i.e. testing the US labor market to ensure that no US worker is available to fill the position for which the applicant is to be hired).

Note: National interest waivers approved prior to issuance of the precedent decision will be honored in §245 or immigrant visa proceedings if beneficiaries pursue employment or are employed in the professional activity on which the NIW was based.

[11] See INS 3/20/00 memo from the Offices of Programs and Field Operations clarifying EB-2 requirements. In summary, it provides that an alien qualifying for EB-2 must have a master's degree, the foreign equivalent, or a bachelor's degree plus five years of progressively responsible experience in the specialty. Correspondingly, the position on which an EB-2 petition is based must require the same. Specifically, blocks 14 and 15 of the ETA-750 supporting an I-140 for EB-2 classification must specify that the position requires a master's degree or bachelor's degree (US or foreign equivalent) followed by at least five years experience in the specialty. If "progressive" experience is not specified, it should be clear from the job requirements.

[12] Although DOL accepts a bachelor's degree plus 3 years' experience as equivalent to a master's degree, this does not satisfy the EB-2 requirement.

[13] ***Exceptional ability*** requires a degree of expertise significantly above that ordinarily encountered.

[14] A ***skilled worker*** is capable of performing labor that requires at least two years of training or experience.

[15] A ***professional*** must have a bachelor's degree and be qualified for an occupation for which a bachelor's degree is the entry requirement. Experiential equivalence of a bachelor's degree may be acceptable on a case-by-case basis.

[16] ***Other workers*** include all beneficiaries with lower credentials than skilled workers who perform unskilled labor.

FOURTH PREFERENCE
"Special Immigrants" including religious workers

REQUIREMENTS FOR RELIGIOUS WORKERS

- Membership for at least 2 years immediately preceding the application for permanent residence in a *religious denomination*[17] having a *bona fide*, nonprofit, *religious organization*[18] in the US, ***and***
- Seeking admission to the US to carry out vocation as a *minister*[19]

Note: Prior to ***October 1, 2000***, applicant may seek to enter based upon a *professional capacity*[20] in a *religious vocation/occupation*[21] or to work for an religious organization or affiliate in a religious vocation/occupation, provided that the applicant has been carrying on such vocation/occupation continuously, within or outside of the US, for a 2 year period.

FIFTH PREFERENCE
Investors creating employment in the UNITED STATES

SPECIAL FEATURES

- This classification allows conditional residency for persons who invest $1,000,000, or $500,000 (under limited circumstances) in a new **commercial enterprise**[22] that employs ten (10) US citizens or authorized immigrant workers full-time. Investors must manage the business investment on a day-to-day basis or through policy formulation.
- Immigrant investors whose petitions to remove conditions are approved will be issued Permanent Resident Cards ("green cards"). In cases where the enterprise has been abandoned or the relationship between the immigrant investor and the qualifying investment terminated or changed so that it no longer meets qualifying standards, permanent residence will be denied and the alien(s) must depart the US.

REQUIREMENTS for Qualifying Investors

- The alien investor must make a qualifying investment using personally owned and legally obtained assets **or** indebtedness secured by personal assets (i.e. not secured by the qualifying commercial enterprise).
- The alien investor must be engaged in management of the enterprise, either through daily managerial control or through policy formulation as a corporate officer, director, or partner.
- Each multiple alien investor in the same enterprise will qualify if he or she meets the minimal capital and job creation requirements. In cases where not all multiple investors seek to immigrate to the US based on the investment, the job creation requirement can be met by those investors who seek to immigrate (based on the joint investment) by apportioning the total number of jobs created among the immigrating investors rather than among all investors.
  Note: *This apportionment among joint investors does not apply to the capital requirement.*

REQUIREMENTS for Qualifying Investments

- Fifth preference investments in new commercial enterprises must benefit the US economy and create full-time employment for at least ten work-authorized employees, excluding the alien entrepreneur, his or her immediate relatives, and persons in nonimmigrant status. Saving ten jobs may qualify if the qualifying investment is in a *troubled business.*
- The capital investment must be $1,000,000 in high employment areas and $500,000 in targeted employment areas. The capital may consist of cash, equipment, inventory, other tangible property, and/or easily convertible cash equivalents.
- The only location criteria apply to $500,000 investments in *targeted employment areas,* which include rural areas identified by the US census or OMB and areas certified by a state government to be experiencing average unemployment of at least 150% of the national average.

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[17] A ***religious denomination*** is a religious group or community of believers having an ecclesiastical government, creed, statement of faith, form of worship, discipline, services, ceremonies, and/or the like.

[18] A ***religious organization*** must be approved or eligible for approval under Internal Revenue Code §501(c)(3).

[19] A ***minister*** must be authorized (e.g. ordained) by a recognized religious denomination to conduct religious worship and to perform duties usually performed by authorized clergymen/women. Lay preachers do not qualify.

[20] ***Professional capacity*** means an activity in a religious vocation/occupation for which a bachelor's degree or foreign equivalent is the minimum entry-level requirement.

[21] A ***religious occupation or vocation*** covers traditional religious functions (liturgical work, religious instruction, counseling, etc). Lay members of religious organizations, engaged in lay work such as the business enterprise of a church, do not qualify.

[22] Any for-profit business can qualify, including sole proprietorships, limited or general partnerships, corporations, business trusts, joint ventures, holding companies and wholly owned for-profit commercial subsidiaries, mutual investment funds, etc. An existing commercial enterprise purchased by alien investor(s) can also qualify, without necessity for reorganization or reincorporation, if the investor's infusion of capital increases the business' net worth **or** the number of qualifying US workers employed by 40%. Pre-existing commercial enterprises also qualify if the alien investor saves ten US jobs by taking over a *troubled business* that has operated for at least two years and has incurred a net loss of at least 20% of net worth during one of the two years preceding the alien entrepreneur's investment.

FIFTH PREFERENCE, cont.

Pilot Program Investments

- To qualify as a basis for fifth-preference immigration as part of the pilot program, investments must be in approved regional centers in the US.
- A ***regional center*** is any public or private economic unit established for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment, which benefits a particular geographic region of the US. As of June 1, 1996, fourteen regional centers had been designated by INS.
- With respect to pilot program investments, the job creation requirement may be calculated via *indirect methodologies* such as multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported by the new enterprise, and other economically or statistically valid forecasting devices that indicate likelihood of increased employment to meet the fifth preference job creation standard.

OTHER REQUIREMENTS: PRECEDENT DECISIONS

Four precedent decisions that set forth new guidance and standards related to the EB-5 classification were issued by INS' Administrative Appeals Office in July 1998. These opinions, which are available upon request from the Office of Business Liaison, are:

Matter of Izumii (A76 426 873)
Matter of Soffici (A76 472 614)
Matter of Hsiung (A76 854 232)
Matter of Ho (WAC-98-072-50493)

FORM I-485

Application to Adjust Status from Nonimmigrant to Employment-Based Permanent Resident

WHO CAN FILE

Any applicant who has an approved I-140 or I-360 or I-526 and for whom an immigrant visa is currently available.

APPLICATION PACKET (Follow instructions on form and include all required dates and signatures)

- G-325A
- Copy of I-797 approval notice for I-140 or I-360 or I-526
- Current employment letter on company letterhead (for principal)
- I-134 affidavit of support (for all dependents, must be filled out completely front & back)
- Proof of the applicant's initial lawful admission into the United States and the applicant's continued maintenance of status. This may include the following:
  - photocopy of applicant's entire passport including all previously issued passports
  - photocopy of Form I-797 Approval Notices for all extension and change of status
  - photocopy of Form I-20 or IAP-66 school records (front and back, including all school annotations)
  - photocopy (front and back) of applicant's Form I-94 Arrival/Departure Record
- Copy of birth certificate with English translation
- Copy of marriage certificate with English translation
- Copy of divorce decree with English translation
- Two photographs
- IRS form 9003
- I-693 (Medical Exam)