

# EMPLOYMENT-BASED PERMANENT RESIDENCY

November 19, 2024— University of Michigan



# DAWN WELK WISE

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# Employment-based permanent residency

- ◆ Limited by statute to 140,000 per year
- ◆ Quota is based on government's fiscal year (starts October 1)
- ◆ 5 basic categories, ranked in order of priority of need by U.S. employers and the economy, as determined by Congress
- ◆ Requires U.S. employer sponsorship based on an offer of permanent, full-time employment (except EB-1 aliens of Extraordinary Ability and EB-2 National Interest Waiver filings, which allow self-sponsorship)

# Preference categories

- ◆ EB-1: Priority workers (outstanding researchers, extraordinary ability, multinational executives and managers)
- ◆ EB-2: Members of professions holding advanced degrees or aliens of exceptional ability (includes national interest waivers) – JOB REQUIRES MASTER'S OR BACHELOR'S + 5 YEARS OF EXPERIENCE
- ◆ EB-3: Skilled workers, professionals, and other workers (unskilled labor, not temporary or seasonal) – JOB REQUIRES BACHELOR'S OR 2 YEARS EXPERIENCE
- ◆ EB-4: Special immigrants, including ministers, religious workers, former U.S. government employees, and others
- ◆ EB-5: Investor green card for those making substantial investment in a commercial enterprise in the U.S.

# Labor certification (perm)

What? Why?

Fees and costs to be covered by employer (no DOL filing fees, all fees associated with labor certification to be paid by employer)



# Perm pitfalls

- ◆ Changes in position
- ◆ Foreign national involved in recruitment
- ◆ Lack of good faith in recruitment process
- ◆ Audit triggers (e.g., foreign language, business necessity, relying on prior experience with sponsoring employer)
- ◆ Minimum job requirements

# Special handling

- ◆ College and university teachers (teaching can be one element of job)
- ◆ Employer underwent “competitive recruitment process”, including ad in a national journal (print or online); found the best (most qualified) candidate for the position based on lawful, job-related reasons; and PERM application filed within 18 months of selection (date of offer letter).
- ◆ Using special handling standard for standard recruitment filings

# i-140 and i-485 processing

- ◆ I-140 requirements (employer's petition to USCIS)
  - ◆ Still offering job described in labor certification
  - ◆ Employer has ability to pay offered wage
  - ◆ Sponsored employee meets stated minimum requirements
- ◆ I-485 (applicant's and dependents' personal applications)
  - ◆ Individual grounds of eligibility
  - ◆ Family members file separately or follow-to-join if not in U.S.
  - ◆ Employment Authorization Document (EAD) and advance parole
  - ◆ Maintaining nonimmigrant status
  - ◆ International travel restrictions
  - ◆ Portability
  - ◆ Concurrent filing



# Visa retrogression/quota backlog

- ◆ Country of birth, not citizenship, controls
- ◆ Cross-chargeability based on spouse's country of birth (not children's)
- ◆ Preference category is largely determined by minimum requirements for position
- ◆ Establishment and "ownership" of priority date
- ◆ Backlog while I-485 is pending
- ◆ Visa Bulletin at [www.travel.state.gov](http://www.travel.state.gov)

# November 2024 EB PRIORITY DATES

	<b>WORLD- WIDE</b>	<b>CHINA</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIP- PINES</b>
1 <sup>ST</sup>	C	08Nov22	01Feb22	C	C
2 <sup>ND</sup>	15Mar23	22Mar20	15July12	15Mar23	15Mar23
3 <sup>rd</sup>	15Nov22	01Apr20	01Nov12	15Nov22	15Nov22

- Final Action Dates vs. Dates for Filing charts
- Potential change to per-country limits

# BYPASSING LABOR CERTIFICATION

## ◆ EB-1 Outstanding Researcher

- ◆ Internationally recognized as outstanding in your field
- ◆ Offered permanent, full-time research position
- ◆ 3 years of (post-Ph.D. generally) experience in the field
- ◆ Meet 2 of 6 statutory criteria
- ◆ Criteria are a baseline, not a definitive checklist (final merits analysis)
- ◆ Concurrent I-485 filing generally not recommended

## ◆ EB-1 Extraordinary Ability (are you a unicorn?)

- ◆ One of a small percentage who has risen to the very top of field
- ◆ Sustained national/international acclaim

## ◆ EB-2 National Interest Waiver (does the U.S. need you?)

- ◆ Substantial merit/national importance/your unique contributions

# Schedule A, group I

- ◆ Pre-certified by the U.S. Department of Labor
- ◆ Nurses and Physical Therapists
- ◆ Application for Labor Certification prepared, but filed with I-140
- ◆ Falls into normal preference categories
- ◆ Updates coming (eventually)

# Final thoughts



Your friends mean well...

The Internet means well?

USCIS may not mean well

Your lawyer **SHOULD** mean well!

American Immigration Lawyers Association (AILA)

[www.aila.org](http://www.aila.org)