EMPLOYMENT-BASED PERMANENT RESIDENCY

November 6, 2018 – University of Michigan
DAWN WELK WISE

Irani & Wise, PLC
900 Victors Way, Ste. 170
Ann Arbor, MI 48108
(734) 995-4900
dawn.wise@iraniwise.com
www.iraniwise.com
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 investing (generally at least $1 million) in a commercial enterprise (must create or preserve full-time jobs for U.S. workers)
Labor certification (perm)

What? Why?
Fees and costs to be covered by employer

Pre-Recruitment
Prevailing Wage Determination
Recruitment
2-6 months: stay out of it!
PERM filing
Processing times, audit, validity
Perm pitfalls

- Changes in position
- Foreign national involved in recruitment
- Lack of good faith in recruitment process
- Audit triggers
- Job requirements
- The nit-picky details!
Special handling

- College and university teachers (teaching can be one element of job)
- Employer underwent “competitive recruitment process”, including ad in a national journal (no longer has to be a print journal), within 18 months of selection and found the best (most qualified) candidate for the position
- Using special handling standard for standard recruitment filings
i-140 and i-485 processing

- I-140 requirements (employer’s petition to USCIS)
- I-485 (applicant’s and dependents’ personal applications)
  - 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
- Preference category is determined by minimum requirements for position
- Establishment of priority date
- Backlog while I-485 is pending
- Visa Bulletin at [www.travel.state.gov](http://www.travel.state.gov)
OCT 2018 EB PRIORITY DATES

<table>
<thead>
<tr>
<th></th>
<th>WORLD-WIDE</th>
<th>CHINA</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1ST</td>
<td>01APR27</td>
<td>01JUN16</td>
<td>01JUN16</td>
<td>01APR17</td>
<td>01APR17</td>
</tr>
<tr>
<td>2ND</td>
<td>C</td>
<td>01JUN15</td>
<td>01JAN09</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>3RD</td>
<td>C</td>
<td>01JUN15</td>
<td>01JAN09</td>
<td>C</td>
<td>01JUN17</td>
</tr>
</tbody>
</table>

- Final Action Dates vs. Dates for Filing
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
  - Criteria are a baseline, not a checklist
  - Processing trends & USCIS adjudicator memo
  - Concurrent I-485 filing generally not recommended

- **EB-1 Extraordinary Ability** (won a Nobel Prize recently?)
- **EB-2 National Interest Waiver** (does the U.S. need you?)
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 – no longer assigned special numbers
- Special requirements
Final thoughts

Your friends are not your friends!
The Internet is not your friend!
USCIS is not your friend!
Your lawyer SHOULD be your friend

American Immigration Lawyers Association (AILA)
www.aila.org