EMPLOYMENT-BASED PERMANENT RESIDENCY

November 20, 2019 – 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 investing (generally at least $1 million – or $500,000 in areas in need of economic stimulous) 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 (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, experience with sponsoring employer)
- 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); found the best (most qualified) candidate for the position based on lawful, job related reasons; and PERM application filed within 18 months of selection (offer letter).
- 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 and “ownership” of priority date
- Backlog while I-485 is pending
- Visa Bulletin at [www.travel.state.gov](http://www.travel.state.gov)
## NOV 2019 EB PRIORITY DATES

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- 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
  ◆ Criteria are a baseline, not a definitive checklist
  ◆ Processing trends & USCIS adjudicator memo
  ◆ Concurrent I-485 filing generally not recommended
  ◆ Current EB-1 Retrogression

◆ EB-1 Extraordinary Ability (won a Nobel Prize recently?)
  ◆ 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
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