

EMPLOYMENT-BASED PERMANENT RESIDENCY

May 7, 2024– University of Michigan



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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
- ◆ 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 (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 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

May 2024 EB PRIORITY DATES

	WORLD- WIDE	CHINA	INDIA	MEXICO	PHILIP- PINES
1 ST	C	01Sept22	01Mar21	C	C
2 ND	15Ja23	01Feb20	15Apr12	15Jan23	15Jan23
3 rd	22Nov22	01Sep20	15Aug12	22Nov22	22Nov22

- 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