

**National Interest Waiver (NIW)
Employment Based 2nd Preference Immigrant Visa Classification
Advanced Degree or Exceptional Ability**

The EB-2 preference classification generally requires PERM labor certification **and** a job offer. However, *an exemption from the job offer and PERM labor certification may be requested if it is determined to be in the “national interest”* of the United States. This is referred to as a “**national interest waiver**” (NIW).

1. The law requires evidence of three (3) of the following:
 - Advanced Degree or equivalent (Bachelor’s degree plus 5 years’ experience)
 - 10+ years full-time experience (for applicants that do not possess advanced degrees)
 - License to practice the profession
 - Membership in professional associations
 - Recognition for achievements and significant contributions
 - Comparable evidence of exceptional ability

Professionals with Advanced Degrees

This category includes professionals who possess a graduate level degree (Master’s degree or Ph.D.) or the equivalent. To be “equivalent” to an advanced degree, the foreign national must have at minimum an actual Bachelor’s degree and five years of *progressive* professional experience within the industry *after* attainment of the Bachelor’s degree.

Exceptional Ability

A foreign national is considered to be of “exceptional ability in the sciences, arts or business.” if they have an expertise significantly above that ordinarily encountered AND, in addition to the job offer, labor certification (or exemption), requires at least **three** of the following:

1. Degree relating to the area of exceptional ability;
2. At least ten years of full-time experience in the occupation as evidenced by reference letters from current or former employers;
3. License to practice the profession;
4. Evidence of a salary or other remuneration for services demonstrating exceptional ability;
5. Evidence of membership in professional associations; and
6. Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities or professional organizations.

National Interest Waiver (NIW)

The regulations *do not* define what is considered to qualify for the national interest waiver. In determining whether one qualifies for the NIW. In 2016 the AAO issued a new decision in the *Matter of Dhanasar*, refining the analytical framework for eligibility for a “National Interest Waiver.” The USCIS previously designated a three-prong test in the case of *New York State Dept. of Transportation*, (“NYSDOT”) as guidance for all NIW petitions.

The *Dhanasar* test, determining that a National Interest Waiver must meet the following criteria:

- 1. The foreign national’s proposed endeavor have both substantial merit and national importance;**
- 2. The foreign national is well positioned to advance the proposed endeavor;**
- 3. On balance, it would be beneficial to the United States to waive the job offer and labor certification requirements**

The NIW will *not* be granted to address localized or regional labor shortages. *The Petitioner must prove that the benefit to the United States outweighs the U.S. worker protection provided by the PERM labor certification process.*

The areas of national interest the foreign national must be contributing to include one or more of the following:

1. Improving the U.S. economy;
2. Improving wages and/or working conditions of U.S. workers;
3. Improving education and training programs for U.S. children and underqualified workers;
4. Improving health care;
5. Providing more affordable housing for young and/or older, poorer U.S. residents;
6. Improving the U.S. environment and making more productive use of natural resources;
7. A request from an interested U.S. governmental agency.

The USCIS has begun combining the requirements of advanced degree and exceptional ability in adjudicating national interest waiver applications. The USCIS has been requiring applicants to provide evidence of how they have “set themselves apart from other qualified workers in the field to such an extent that they will substantially benefit the United States to a significantly greater degree than other in their field.” Although this standard is not required by the regulations, the USCIS has made this interpretation based on past AAU decisions.

The **national interest waiver** is an excellent method of expediting U.S. permanent residence for those that qualify as it avoids the lengthy process of PERM labor certification as well as not requiring the offer of employment. Please note that you will need to have evidence that you will continue to work in your area of expertise.

Fong•Ilgan, LLP works with clients to simplify the immigrant visa process. Please contact our office at 713.772.2300 to discuss your eligibility for this preference classification.