

Employment Based Immigration

Visa Categories for Physicians, Researchers and other Medical Professionals

There are three (3) primary categories for employment based permanent residence for medical and research professionals under the Immigration Preference System in the United States. Some classifications may be petitioned without a job offer from an employer, while others require a job offer and a labor certification. Please refer to the DOS Visa Bulletin for priority dates.

1st Preference: Priority Worker

		Labor Cert required?	Job Offer
EB-1(1)	Aliens of extraordinary ability	No	No
EB-1(2)	Outstanding professors and researchers	No	Yes

2nd Preference: Advanced degree Professional

EB-2(1)	Professionals holding advanced degrees	Yes unless NIW	Yes
EB-2(2)	Aliens of exceptional ability	Yes unless NIW	Yes

3rd Preference: Professionals and Skilled Worker

EB-3(1)	Job requiring a minimum of 2 years of training, education, or experience	Yes	Yes
EB-3(2)	Job requiring minimum of bachelor’s degree	Yes	Yes

1st Preference: Priority Workers

Group 1 consists of two applicable sub-groups of “priority workers.” 40,000 visas are devoted to this group, plus any unused visas from the fourth and fifth groups. Labor certification is *not* required for Group 1 petitions. The sub-groups are:

- EB-1(1): Aliens of extraordinary ability in the sciences, education and business;
- EB-1(2): Outstanding professors and researchers

A. Individuals of “Extraordinary Ability”

This category includes persons with “extraordinary ability in the sciences, arts, education, business or athletics.” The Beneficiary must demonstrate “extensive documentation” that the extraordinary ability has received “sustained national or international acclaim.”

Evidence includes receipt of a one-time achievement - major international award (e.g. Nobel Prize) *or* any three of the following:

1. Receipt of lesser national or internationally recognized prizes or awards;
2. Membership in association in the field requiring outstanding achievement as judged by recognized experts;
3. Published material about the alien in professional, major trade publications or other major media;
4. Participation as a judge of the work of others;
5. Original scientific, scholastic, artistic, athletic or business contributions of major significance;
6. Authorship of scholarly articles in the field;
8. Performance in leading roles for organizations with distinguished reputations;
9. High salary or remuneration in relation to others in the field; and
10. Commercial success in the performing arts.

B. Outstanding Professors and Researchers

Professors and researchers are considered to be “outstanding” if they meet three criteria. (1) They must have been “recognized internationally as outstanding” in a specific academic area, (2) must have at least three years experience teaching or conducting research in that area, and (3) they must be coming to the United States to accept a tenured or tenure-track teaching or research position with a university, or an equivalent position with a private employer. The evidence must contain at least two of the following:

1. Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
2. Documentation of the alien's membership in associations in the academic field that requires outstanding achievements of their members;
3. Published material in professional publications written by others about the alien's work in the academic field. Materials should include title, date, and author, and any necessary translation;
4. Evidence of the alien's participation, individually or on a panel, as the judge of the work of others in the same or an allied academic field;
5. Evidence of the alien's original scientific or scholarly research contributions to the academic field;
6. Evidence of the alien's authorship of scholarly books or articles in journals with international circulation, in the academic field.

2nd Preference: Advanced Degrees and Exceptional Ability

Group 2 includes professionals with advanced degrees (Master’s and Doctorate) or the equivalent and aliens of “exceptional ability.”

The EB-2 category generally requires a labor certification (active recruitment by the employer to show that a U.S. worker is not available) and a job offer, but an exemption from the job offer and labor certification may be requested if it is in the "national interest." This is called a national interest waiver (NIW)

EB-2(1): Professionals Holding Advanced Degrees, or “equivalent” qualifications (Bachelor’s degree (BS or BA) and 5 years progressive experience); and
EB-2(2): Aliens of Exceptional Ability.

Professionals with Advanced Degrees

A “member of the professions” is an alien with at least a Bachelor’s degree or its equivalent in a particular field, and is employed in an occupation that normally requires that degree. This category includes professionals with a graduate level (Master’s or higher) degrees, or equivalent.

To be considered “equivalent” to an advanced degree, the alien must have at least a Bachelor’s degree (actual degree) and five years of progressive professional experience after attainment of the Bachelor’s degree.

Exceptional Ability

An alien is considered to be of “exceptional ability in the sciences, arts or business.” if the alien has a 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 in the “national interest.” In *Matter of Dhanasar* the USCIS articulates a 3-part test:

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

Matter of Dhanasar supersedes *Matter of New York State Department of Transportation* (NYSDOT)

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 CIS has made this interpretation based on past AAU decisions.

The national interest waiver is an excellent method of expediting permanent residence for those that qualify as it avoids the lengthy process of labor certification.

3rd Preference: Skilled Workers and Professionals with bachelor's Degrees

Group 3 includes members of the professions holding bachelor's degrees, "skilled" workers with at least two years of experience and/or training, and "other" workers having less than two years vocational preparation.

This category receives 40,000 visas annually, plus any unused visas from the first two categories discussed above. It is important to note, however, that no more than 10,000 visas may go to the "other" (unskilled) workers. Labor certification is required for Group 3 and there is no waiver.

There is no distinction in visa preference between an entry-level professional and a skilled worker with two or more years experience and/or training. They are in the same employment-based category. The limitation placed upon the "other" portion of this group results in a crucial distinction between "skilled" and "unskilled" workers.

EB-3(1): Skilled Workers (at least 2 years experience or training)

EB-3(2): Professionals with bachelor's degrees or the equivalent

EB-3(3): Other Workers (less than 2 years experience or training)

Schedule A, Group I Physical Therapists and Professional Nurses

The U.S. Department of Labor (DOL) has pre-certified certain occupations, determining that these workers will not adversely affect U.S. workers. Schedule A workers do not need complete the DOL PERM labor certification process. These cases do require a prevailing wage determination, certain posting notice and a 30-day waiting period prior to filing the I-140 immigrant visa petition. It can be either an EB-2 or EB-3, depending upon the position requirements.

Schedule A contains two groups. The more common is Group I, which includes physical therapists and professional nurses. Group II is for persons of exceptional ability in science or arts and university professors.

Requirements

- Job offer is required for **all** Schedule A filings
- I-140 petition filed by employer, with the completed (uncertified) PERM labor certification
- Compliance with DOL notice posting requirements
- Evidence of licensing or certification qualifications as nurse or physical therapist

Fong•Ilagan, LLP works with clients to simplify the immigrant visa process for medical and research professionals. Please contact our office at 713.772.2300 to discuss your case with an experienced immigration attorney.