

# Extraordinary Cases in Extraordinary Times

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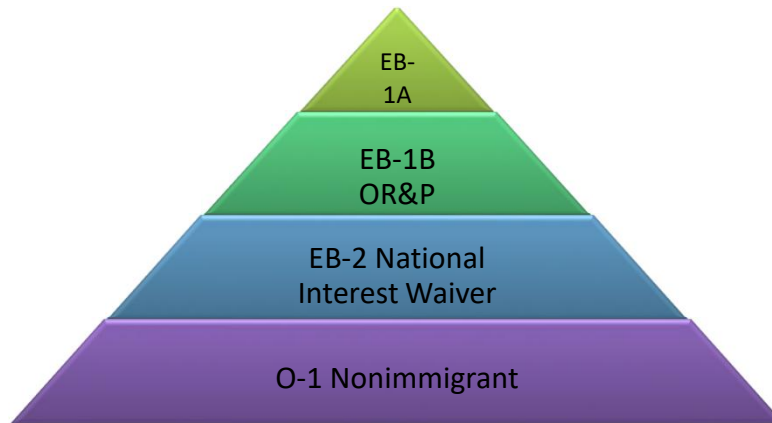
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## The COVID-19 Effect

- Processing Times
- Suspension of Premium Processing
- Maintenance of Status issues
  
- Executive Order – suspends green card processing *outside* of the United States
- Travel caution

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## The Hierarchy of Difficulty



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## Common Evidence

- Documentary evidence is highly similar among these categories and often includes:
  - Original contributions
  - Publications
  - Discussion of work by others
  - Service as a judge of the work of others
  - Employment with prestigious organizations
  - Awards
  - Memberships
  - High salary
  - Comparable evidence



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## Category-Specific Standards

- EB-1A: Extraordinary Ability
  - One of a small percentage at the top of the field of endeavor
  - Sustained national or international acclaim & recognition in the field
- EB-1B: Outstanding Professors & Researchers
  - Recognized internationally as outstanding in the academic field
  - Three years of experience teaching or researching in the field

## Category-Specific Standards

*cont'd*

- National Interest Waiver (NIW)
  - EB-2
  - Advanced degree or exceptional ability
  - Exceptional ability: A degree of expertise significantly above that ordinarily encountered
  - Focus on national importance and impact

## Category-Specific Standards

*cont'd*

- O-1 Non-Immigrant
  - Very similar to EB-1A for individuals in science, education, business or athletics:
    - Small percentage at the top of the field
    - Sustained national or international acclaim & recognition
  - O-1 in the arts – must establish distinction:
    - A degree of skill and recognition substantially above that ordinarily encountered
    - Prominent, leading, or well-recognized

## Two-Part Analysis

- *Kazarian* decision of 2010
- Applies to all EB-1 and NIW cases
  - Step One: Does the petition contain evidence of the requisite number of criteria?
  - Step Two: “Final Merits” Determination – does the evidence demonstrate that the beneficiary meets the required level of expertise?
- Both parts of analysis can trigger an RFE
- Step Two is highly subjective
- Colors O-1 Non-Immigrant adjudications as well

## RFE Trends & Best Practices

- It is now impossible to fully avoid RFEs – no matter how strong a case is or how well it's documented
- High RFE rate means adjudications are more difficult – *and take longer* – even if most cases ultimately succeed
- Increasingly important to dot all i's and cross all t's – USCIS will look for reasons to issue an RFE
- AVOID PREMIUM PROCESSING – “buying” an RFE

## The Bright Side

- EB-1 and NIW adjudications have not been hit as hard by new policies as other categories
- Although we see RFEs, KILP success rate remains high
- Categories continue to provide increased flexibility to applicants





## How Do We Stay Unflappable?

- ✓ Strategy
- ✓ Strong Evidence
- ✓ Communication

## Frequently Asked Questions

1. Do I need an employer sponsor?
  - Employment offer required for EB-1B and O-1
  - EB-1A and NIW can self-sponsor, may be strengthened with employer support
2. How many publications do I need?
  - Only one criterion of many; not required in every case
  - Quality v. Quantity
  - Industry or media publications
3. Do I need a certain job title or salary?
  - Job title not as important as the work being done
  - Salary is one criterion that can be considered, not determinative alone

## Frequently Asked Questions *cont'd*

4. What do I need to know about referees?
  - Appropriate number varies
  - Leverage professional networks
  - Strive for diversity – different backgrounds, geographic location, etc.
  - Consider a referee's own qualifications/employer
  - EB-1 OR: At least one international referee

## Frequently Asked Questions *cont'd*

5. How can I leverage research or grants I am not named on?
  - Use other evidence to document contributions
  - Strong support from PI or supervisor
6. How can I leverage prior research?
  - Any relation to current work
  - Help build the overall narrative of a case

## Frequently Asked Questions *cont'd*

7. How do I make my case stronger?
  - Evidence, evidence, evidence
  - Trends point towards less deference to letters, increased reliance on documentary evidence
  
8. When should I apply?
  - Timing unique to each case
  - Considerations include career progress and accomplishments as well as immigration status
  - What does an applicant have on CV v. coming soon

## Frequently Asked Questions *cont'd*

9. How to decide if EB-1A, EB-1B, or NIW is the best fit for permanent residence?
  - Employer sponsorship or lack thereof
  - Overall strength of evidence
  - Applicant or beneficiary's country of birth
  
10. Should an employer pursue an O-1?
  - J-1 home residency issues
  - H-1B max-out issues



# Questions?

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