



A Prescription for Success: EB-1 for Doctors

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Physician Immigration Options

- EB-2 Labor Certification
- EB-2 National Interest Waiver
 - Clinically Based – Underserved Area 5 years
 - Other Based – National Impact on Field
- EB-5 Investor Visa
- EB-1A and EB-1B for Physicians





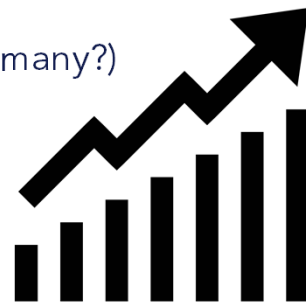
The Current EB-2 Challenge

- Per Country Limit: 7% of visas, so 2800 in EB-2
- Each family member uses a visa (2.5 per worker)
- Fewer "unused" numbers available from other categories
- EB-3 "upgrades" increase demand in EB-2



Current EB-2 Quota Waits

- EB-2 is March 2009, EB-3 November 2008
- Quotas will advance in parallel for foreseeable future
- 200,000+ approved I-140s, but some (many?) duplicates
- Wait likely to be 10-15+ years without laws changing
- Legislative fix (HR 392) would help but not eliminate wait





EB-5 Visa Option: Investment & Employment Creation

- Minimum Investment \$500,000 (may increase later this year)
- Direct Option: form business (e.g. medical practice) & hire 10 US workers
- Regional Center Option: businesses that can be credited with indirect employment
- Must be able to Document Source and Path of Funds
- Investment must be sustained for minimum of 4-6 years



	Purpose	Standard	Criteria	Distinguishing Feature
Extraordinary Ability	One of the small percentage in sciences, arts, education, business, or athletics, who has risen to the very top of the field	Sustained national or international acclaim	<ul style="list-style-type: none"> • One-time achievement -or- • 3 of the 10 listed kinds of evidence 	<ul style="list-style-type: none"> • Employer-sponsored -or- self-petitioned • Original contributions must have "major significance"
Outstanding Professor/Researcher	Outstanding in the academic field	Recognized <u>internationally</u> as outstanding	<ul style="list-style-type: none"> • 2 of the 6 criteria + • 3 years experience + • Qualifying employer 	<ul style="list-style-type: none"> • Employer sponsored
National Interest Waiver	Members of the profession holding advanced degrees	Foreign national's immigration into the U.S. is in the national interest	<ul style="list-style-type: none"> • Proposed endeavor has both <i>substantial merit and national importance</i> • Well-positioned to advance proposed endeavor • Beneficial to the U.S. to waive requirements of labor certification and job offer 	<ul style="list-style-type: none"> • Employer-sponsored -or- self-petitioned





Employment Based (EB) Permanent Residency

- All options **MAY** be employer-sponsored.
- Some options **MUST** be employer-sponsored.
 - Outstanding Researcher
 - Labor Certification
- Other options **MAY** be self-sponsored
 - Extraordinary Ability
 - National Interest Waiver
- OK to file multiple petitions
- Multi-step process



Extraordinary Ability vs. Outstanding Researcher or Professor

Similarities

- 1st authored articles/impact factors
- Citations to 1st authored work
- Peer Review/Manuscript Review Work, conference organization, review articles
- References from independent experts
- Documentation meeting regulatory Criteria
- Comparable evidence allowed if above criteria do not apply
 - Premium Processing is available





Extraordinary Ability vs. Outstanding Researcher/Professor

Extraordinary Ability

- Can be self-petitioned
- Original contributions must be of "major significance" or have "significant impact" on the field



Outstanding Researcher/Professor

- Must be employer-sponsored
- Contributions to the field must be "original"



Outstanding Researcher

- Employer-sponsored petition
- At least 3 Years experience
- Job offer characteristics
 - Tenured/Tenure track faculty
 - "Permanent Research Position"
- Qualified Employers:
 - Academic Institutions
 - Industry
 - At least 3 FT researchers
 - Recognition in field





Two-Part Analysis

- Introduced in December 2010
 - Does Petition Contain Evidence of Requisite Number of Criteria?
 - 'Final Merits Analysis' – does evidence demonstrate that beneficiary is one of a very few at the top of the field?
 - USCIS provides no clear guidelines for applying final merits analysis



Regulatory Criteria and Steps You Can Take to Address Them

- In Your Daily Practice
- External to Your Daily Practice





In Your Daily Practice

- Document your influence on clinical practice
- Document your specialization in complicated or rare cases
- Document any evidence-based recommendations or guidelines you've contributed to the field
- Document the number of procedures you have performed, especially those that are challenging or rare



External to Your Daily Practice

- Give presentations at other institutions detailing any original approaches to diagnosis or treatment you may have developed and implemented
- Seek out opportunities to judge the work of others
- Pursue fellowships and certifications, documenting the prestige of any you receive





Choosing Your Filing Strategy

- Backlog status
- AOS timing (concurrent vs. post-approval)
- Strength of case



The NIW Alternative

- Pros/Cons
 - More forgiving to physicians
 - Backlogs for China and India
- Joint filing with EB-1



Questions?



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