

1. Aliens of Extraordinary Ability

2. National Interest Aliens

3. Outstanding Researchers

Extraordinary, Outstanding and National Interest Foreign Nationals

The Immigration Act of 1990 provided for the first time a special expedite process for foreign nationals who are either “aliens of extraordinary ability,” those whose immigration is in the “national interest”, or who are considered “outstanding researchers.” The legal staff of Klasko, Rulon, Stock & Seltzer LLP has represented hundreds of these foreign nationals. Given our extensive experience, we have found that in well documented cases, immigration may be possible without a job offer (except in the case of an outstanding researcher) or the necessity of completing a labor certification process.

This information will provide a general understanding of these immigration options and their eligibility requirements. It is for informational purposes only. If you believe you are a candidate, or would like to sponsor a candidate, we strongly recommend that you seek the advice of an attorney. For our office to provide a realistic assessment of the prospect for these categories, it is necessary for us to review the curriculum vitae or resume of the applicant. If you decide to proceed with our services, we will provide you with specific guidance for the preparation of the case.

Common Elements

It is normally possible to submit an application for a single individual simultaneously under two or more categories. With regards to these three types of petitions, the evidence required is virtually the same. Consider, for example, that evidencing special qualifications above the norm (alien of extraordinary ability and outstanding researcher) and evidencing that these qualifications will prospectively benefit the U.S. (national interest waiver) entail virtually the same documentation.

The major difference between the national interest waiver and the other two categories is that in evidencing that a foreign national’s immigration will serve the national interest, adjudication of the petition will most likely focus on the needs of the U.S. and foreign national’s ability to satisfy these needs. On the other hand, in the extraordinary ability or outstanding researcher case, adjudication will focus predominately on the foreign national’s superior qualifications. In order to document these types of cases, it is necessary to establish the superior qualifications of the alien, and the need of the U.S. for an alien of such qualifications. The greater the alien’s qualifications, of course, the more obvious it becomes that the United States will benefit from the services of the alien.

Differences

As opposed to the national interest waiver and the extraordinary ability petitions, the outstanding researcher does require an employer who is willing to act as the petitioner for the immigration visa. Moreover, the outstanding researcher case also requires evidence that the candidate has three years experience as a researcher. Other than these two differences, the criteria are primarily the same.

With regard to the national interest waiver, there is no *per se* standard of qualifications. Rather, a ruling by the Administrative Appeals Unit (AAU) established legal standards that are included in the cover letter submitted by our office. Thus, when preparing the documentation in support of the application, the focus can primarily be made on the criteria that the U.S. Citizenship and Immigration Services (CIS) established to measure an “alien of extraordinary ability.” According to the CIS regulations, the foreign national must provide evidence of at least three of the following types:

1. His or her original contributions of major significance to the field;
2. Material published about the foreign national’s work in the field;
3. His or her receipt of nationally recognized prizes, awards or distinctions;
4. Evidence of his or her services in a leading or critical role for distinguished organizations;
5. Evidence of his or her having served as a judge of the work of others;
6. His or her high salary in comparison with others in the field;
7. His or her authorship of scholarly articles, abstracts or presentations; and
8. His or her membership in societies that demand outstanding achievement.

While the threshold requirement is three of these criteria, we aspire to present evidence from as many of these categories as possible. This is because the CIS tends to look at the totality of evidence submitted, and does not merely “check off” each criteria as met.

Preparing the Application

The first step in preparing the immigration petition is to clearly articulate in layperson’s terms the foreign national’s qualifications. In this regard, please note that the CIS adjudicators are college graduates who may have little or no advanced training in science, medicine or the relevant field of expertise. Therefore, it is essential that the foreign national’s special expertise be clearly explained, defined, and articulated in a manner that the lay person can understand.

To provide evidence that the applicant meets these evidentiary requirements, our lawyers will prepare template support letters. These letters will guide individuals familiar with the

candidate's achievements in writing support letters that address each of the above-mentioned categories. **It is critical to the process to have a diversity of institutional letterheads to document the candidate's distinction.** In order to prepare these letters, we require a detailed annotated resume that responds to the categories listed below. Please note that the criteria as described below are meant only for general review. If a decision is made to proceed with the case, a more detailed outline of these criteria will be provided:

1. Significant Contributions

Please describe, in lay terms that someone with only a high school education in science, business, IT or other fields would understand, your most significant research or significant contribution to the field. This description should focus on two to three contributions that have elements in common. Please indicate where you were the primary investigator or the lead, or if not the primary investigator, what your contribution was. If the candidate is primarily a medical clinician or other type of professional, please describe in detail your area of expertise, the degree of skill required for the field, why it is significant, and any developments the candidate initiated or developed in the field.

2. Honors, Awards and Distinctions

This may include any distinctions received while studying or training; any research or study grants; any prizes for presentation; any specialization certificates (M.R.C.P, M.D., competitive fellowship or residency positions, etc.); patented innovations, critical contributions to an important grant. For each distinction, provide documentary evidence as well as the criteria for granting the award.

3. Publications, Presentations and Abstracts

Please provide copies of all publications, abstracts and presentations (or the brochures from presentations/meetings). Please provide a brief paragraph describing in basic terms what the paper/presentation was about, and why it is significant. Please explain the significance of the forum. If you are a co-author, explain your specific contribution to the research.

4. Leading and Critical Posts

To help us categorize the foreign national's experience to suit this criterion, please provide a detailed description of the responsibilities for positions held, including to whom the foreign national reported, how many people the foreign national supervised, any management, administrative or policy making roles, etc. Examples of leading and critical posts include primary researcher, consultant positions, and project leader.

5. Judge the Work of Others

This often goes hand in hand with Leading and Critical Posts and includes all teaching positions. For example, teaching experience may include judging and evaluating the work of students, medical residents, fellows, scientists, et cetera. Other examples may include when the individual was in a position to supervise and evaluate the work of others, such as peer

reviewer for journals, author of review articles, position on editorial boards, evaluating the work of junior staff.

6. Membership in Societies That Require Outstanding Achievements

Please describe the criteria for membership in each society. Does it include entrance exams, evaluation by the Board, nomination and election, significant publications, number of surgical procedures, letter of reference? If possible, send us copies of the bylaws, membership application, or membership criteria with the membership certificates.

7. Materials About the Foreign National's Work

This can include any citations to the individual's work or acknowledgment of the candidate's assistance in a project or study. Please provide documentary evidence of where the work was cited.

8. High Salary in Comparison to Others

Please provide evidence if this has been the case.

9. Narrow Description of Field

For this category, it is important to depict the individual as one of a select few near the top of the field. In order to do this, we need a narrow description of their field of expertise.

With this information, our lawyers will draft sample support letters articulating the legal issues and providing detailed evidence of the individual's distinctions in the field. Of course, these letters will be reviewed by both the foreign national and the referee for factual accuracy. Upon execution of testimonial letters on behalf of the foreign national (generally five letters) and the receipt of the corroborating documentation, a cover letter is prepared by our lawyers summarizing the foreign national's distinction and laying out the legal arguments. The application is then submitted to the CIS along with the I-140 petition for an immigrant visa. Approval of the I-140 provides for the issuance of the foreign national's permanent residence in the United States, I-551 (green card). CIS processing times vary depending on where in the United States the candidate will be working or living.