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<h2>Intro</h2>				
	EB-1A Extraordinary Ability	EB-1B Outstanding Professors & Researchers	EB-2 National Interest Waiver (NIW)	
<b>Description</b>	National or international acclaim in the sciences, arts, education, business, or athletics through sustained national or international acclaim.	International recognition in a particular academic field, with 3+ years of experience in teaching or research.	Requesting that the job offer, and the labor certification, be waived because it is in the interest of the United States.	
<b>Sponsorship</b>	Employer or self-sponsored	Employer-sponsored	Employer or self-sponsored	
<b>Criteria</b>	<p><u>Must meet 3 out of 10:</u></p> <ol style="list-style-type: none"> <li>1. Awards</li> <li>2. Memberships</li> <li>3. Press coverage</li> <li>4. Judge work of others</li> <li>5. Original and significant contributions</li> <li>6. Authoring articles</li> <li>7. Art exhibitions</li> <li>8. Critical organizational role</li> <li>9. High compensation</li> <li>10. Commercial success</li> </ol>	<p><u>Must meet 2 out of 6:</u></p> <ol style="list-style-type: none"> <li>1. Awards</li> <li>2. Memberships</li> <li>3. Press coverage</li> <li>4. Judge work of others</li> <li>5. Original research contributions</li> <li>6. Author books or articles</li> </ol>	<p><u>Must meet all criteria</u></p> <ol style="list-style-type: none"> <li>1. Must have a proposed endeavor in a US national interest field</li> <li>2. Must be well-positioned to advance the endeavor, and have an advanced degree from a U.S. institution or foreign equivalent or establish exceptional ability</li> <li>3. Must be beneficial to the US to waive the labor certification process</li> </ol>	
<b>Family Benefits</b>	After the criteria are met, USCIS will conduct a discretionary final merits assessment.			
	Spouse and unmarried children (under 21) eligible to apply for green card, if priority date is current.			

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## National Interest Waiver

- Criteria established in *Matter of Dhanasar*:
  1. Proposed work must have both substantial merit and national importance
  2. Beneficiary must be well positioned to advance the proposed work
  3. On balance, it must benefit the United States to waive the job offer and labor market test from the PERM process

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## NIW Pros

- Self-sponsored
- Emphasis on STEM fields
- Premium Processing\*

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## NIW Cons

- Visa delays
- Proving national interest
- Meeting criteria to waive PERM

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## STEM and NIW

- Policy Update – January 2022
  - Prioritizing NIWs in STEM in recognition of the importance of progress in STEM fields
  - Advanced STEM degrees are positive factors at all 3-steps of NIW analysis
    - Example: Prong 2 – STEM PhDs will be considered as an especially positive factor
  - STEM degree alone not enough
  - Companion guidance issued on same day to prioritize STEM in O-1s

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## How to Prepare a Successful NIW Petition

- Carefully and clearly explain the field of endeavor
- Document national interest and merit of the work
- Document YOUR contributions and plans in the field:
  - Retain copies of not only publications, but engagement with the field (presentations, talks) and academic or professional service (peer review, grant review)
  - Articulate your plans to continue in the field

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## EB-1 Two-Step Analysis

- Determine if applicant meets regulatory criteria under 8 CFR 204.5(h)(3)
- As a final-merits determination whether, based on the totality of the circumstances, the applicant is at the very top of their field

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## EB-1 Fields

- EB-1A (extraordinary ability) and EB-1B (outstanding researcher/professor) can be pursued for *any* field – so long as requirements are met
- STEM fields and academic work – excellent fit to regulatory structure
- January 2022 guidance on STEM and O-1s can guide EB-1 case development, no STEM guidance specific to EB-1

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## How to Prepare for a Successful EB-1 Petition

- Common Criteria Sought
  - Original Contributions (RFE risk)
  - Publications
  - Citations
  - Judge of
  - Leading/Critical
- Areas of Focus
  - Proof of achievements
  - Recognized in field of expertise

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## How to Prepare for a Successful EB-1 Petition

*Cont'd*

- Improvements
  - Publications
  - Document contributions
  - Present to other institutions
  - Judge the work of others
  - Leading or critical role

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## Overall Merits Analysis

- Once the regulatory criteria is met, USCIS makes a “final merits” determination on whether the applicant is at the very top of their field
- Look to quality of the evidence being submitted

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## What Not To Do

- Don't pay for publications or press coverage
- Don't review more manuscripts under someone else's name
- Don't lose access to email records – often happens in change of employer
  - Cc your personal email when sending reviews/key documents

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## Questions?



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