

Everything Good About Employment

PERM (EB-2 & EB-3) and PERM-exempt
(EB-1 and EB-2/NIW)

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Introduction

- Employment based preference categories were created in the Immigration and Nationality Act of 1990 ("IMMACT 90").
- A limited number of visas are made available each year.
- All cases require the filing of a petition with the USCIS.
- Most cases require a permanent offer of employment from a U.S. employer.
- All cases in the employment-based, third (EB-3) and most cases in the employment-based second (EB-2) preference categories require employment sponsorship and approval of PERM.
- Self-sponsorship, based upon qualifications, is available in EB-2 (National Interest Waiver – NIW) and EB-1 (extraordinary ability) categories.

EB-1 – Employment-Based, First Preference

- Reserved for:
 - Aliens of extraordinary ability in the sciences, arts, education, business, and athletics;
 - Outstanding professors and researchers with universities or private employers that have established research departments; and
 - Managers and executives who may be transferred to the U.S.
- Good alternative employment-based options when a regular labor certification (PERM) process is not possible or desirable.

EB-1.1 Alien of Extraordinary Ability

- Applicant must demonstrate by extensive documentation that they are one of that small percentage who have risen to the very top of his/ her field of endeavor.
- The applicant has the burden of establishing his/ her extraordinary ability or achievement.
- No offer of employment is required

Practice Pointer

- Clearly define the field of endeavor or the USCIS may compare the foreign national to a group that is too large and inclusive. For example, it is easier to prove that an individual is one of the world's foremost experts in Baghaar cooking techniques than to prove that he or she is one of the world's foremost experts in all cooking techniques.

EB-1.1 Adjudication Times

- Standard processing (per USCIS website):
 - NSC: Nine (9) months
 - TSC: Four (4) months
- Premium Processing is available

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