Immigration Presentation for International Postdocs, Medical Doctors, Research Scientists and University Professors
News and Important Info
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- Backlogs for India and China
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- Backlogs for India and China
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- H-Visa availability
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- Bi-Specialization Update
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- Premium Processing Update
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- Current Bills in Congress
Retrogression-Backlogs
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- EB-1 (Extraordinary Ability, Outstanding Researcher): Applications are current for everyone - expected to remain so for fiscal year
Retrogression-Backlogs

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- EB-2 (National Interest Waiver, Advanced Degree PERM): China and India are backlogged to April, 2004 - most likely will improved next fiscal year.
Retrogression-Backlogs

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- **EB-2 (National Interest Waiver, Advanced Degree PERM):** China and India are backlogged to April, 2004 - most likely will improve next fiscal year.

- **EB-3 (Professional PERM):** All countries backlogged.
Retrogression - Backlogs

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  - India, China - 2002
Retrogression-Backlogs

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- EB-3 (Professional PERM): All countries backlogged
  - India, China - 2002
  - All other Countries - 2006
What Does Retrogression Mean?
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- Date must be current at time of filing AND at time of approval
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- Currently, if you are from India or China you CANNOT file an I-485 based upon your EB2.
What Does Retrogression Mean?

- Date must be current at time of filing AND at time of approval.
- Currently, if you are from India or China, you CANNOT file an I-485 based upon your EB2.
- If you file an I-485 based upon the EB-1 and the EB-1 is denied, the I-485 will be
H-Visa Availability
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- Only 65,000 per year (plus 20,000 for Master’s Cap).
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- The above applies to CAP SUBJECT
Bi-Specialization
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- I-140’s: East coast and South - Texas, West Coast and Mid-West - Nebraska
Bi-Specialization

- I-140’s: East coast and South - Texas, West Coast and Mid-West - Nebraska
- H-1b and other Temp. Visas
  East Coast and South - Vermont
  West Coast and Mid-West - California
Bi-Specialization

- I-140’s: East coast and South - Texas, West Coast and Mid-West - Nebraska
- H-1b and other Temp. Visas East Coast and South - Vermont West Coast and Mid-West - California
- All I-765 and I-131 renewals filed based upon address of applicant, not based upon where application was originally filed
I-140 Timelines
I-140 Timelines

- May only file I-140 in two places:
  - Texas Service Center - July 2007
  - Nebraska Service Center - Jan. 2007
- 95% of cases decided within timelines
- If not, after pass timeline by 60 days can contact USCIS to check on case
Premium Processing

- Still Available for I-129’s (H-1b, O-1)
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- Now available for CERTAIN I-140’s
  - Must be in sixth year of H, with no way to extend to seventh year except by approved I-140
  - Must also be affected by Immigrant Visa backlogs
Congressional Bills
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- Most likely changes:
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  - Recapture unused Family and Employment visas from previous years
Congressional Bills

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- Most likely changes:
  - Recapture unused Family and Employment visas from previous years
  - Remove per country limits for
VISAS

- Two Types of Visas:
  - Non-Immigrant Visas
  - Immigrant Visas (Employment, Family)
Non-Immigrant Visas
Non-Immigrant Visas

- Visas are lettered (A, B, C....)
Non-Immigrant Visas

- Visas are lettered (A, B, C,...)
- Each visa has its own requirements, timelines, availability, etc.
Non-Immigrant Visas

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- Each visa has its own requirements, timelines, availability, etc.
- Your I-94 indicates how long you can stay in the country - can be extended by USCIS Extension of Status application
Non-Immigrant Visas

- Visas are lettered (A, B, C,....)
- Each visa has its own requirements, timelines, availability, etc.
- Your I-94 indicates how long you can stay in the country - can be extended by USCIS Extension of Status application
- Visa stamp allows you to re-enter the US after travel - does not affect status in US
Immigrant Visas
Immigrant Visas

- Two Main Categories:
Immigrant Visas

- Two Main Categories:
  - Family Based (through Spouse, Parent, Child, Sibling)
Immigrant Visas

- Two Main Categories:
  - Family Based (through Spouse, Parent, Child, Sibling)
  - Employment Based
Immigrant Visas

- Two Main Categories:
  - Family Based (through Spouse, Parent, Child, Sibling)
  - Employment Based
    - Through Employer (OR, PERM)
Immigrant Visas

- Two Main Categories:
  - Family Based (through Spouse, Parent, Child, Sibling)
  - Employment Based
    - Through Employer (OR, PERM)
    - Self-Sponsored (EA, NIW)
Employment Based IV
Employment Based IV

EB-5
9940.00

EB-4
9940.00

EB-3
40040.00

EB-2
40040.00

EB-1
40040.00
Employment Based IV

- 140,000 total Immigrant Visas Divided into five categories:
  - EB-5 9940.00
  - EB-4 9940.00
  - EB-3 40040.00
  - EB-2 40040.00
  - EB-1 40040.00
Employment Based IV

- 140,000 total Immigrant Visas Divided into five categories:
  - EB-1: Extraordinary Ability, Outstanding Researcher, Multi-National Executive (28.6% of total)
Employment Based IV

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  - EB-1: Extraordinary Ability, Outstanding Researcher, Multi-National Executive (28.6% of total)
  - EB-2: National Interest Waiver, Advanced Degree or Exceptional Ability PERM (28.6%)
Employment Based IV

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  - EB-4: 9940.00
  - EB-5: 9940.00
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  - EB-1: Extraordinary Ability, Outstanding Researcher, Multi-National Executive (28.6% of total)
  - EB-2: National Interest Waiver, Advanced Degree or Exceptional Ability PERM (28.6%)
  - EB-3: Professional PERM (28.6%)
  - EB-4: Special Immigrants (7.1%)
  - EB-5
Employment Based IV

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  - EB-1: Extraordinary Ability, Outstanding Researcher, Multi-National Executive (28.6% of total)
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  - EB-3: Professional PERM (28.6%)
  - EB-4: Special Immigrants (7.1%)
  - EB-5: Employment Creation (7.1%)
Where Can you file?
Where Can you file?

- In United Stats: File Adjustment of Status (I-485)
Where Can you file?

- In United States: File Adjustment of Status (I-485)
- Overseas: Sent to NVC, then US Consulate in your Home Country
NON-IMMIGRANT VISAS
J-Visas
J-Visas

- Most cases 5 year max - maybe 7 years
J-Visas

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- 212(e) - 2 year home residency requirement
J-Visas

- Most cases 5 year max - maybe 7 years
- 212(e) - 2 year home residency requirement
- Subject if you receive money from U.S. government, your government, or international organization OR on Skills list OR Graduate Medical Education
212(e) Waivers
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- Four types of Waivers:
212(e) Waivers

- Four types of Waivers:
  - No-Objection: statement from your home-country AND organization if receive US gov’t funding or Int’l org. funding
212(e) Waivers

- Four types of Waivers:
  - No-Objection: statement from your home-country AND organization if receive US gov’t funding or Int’l org. funding
  - IGA: Requires employer to sponsor you and submit application to US gov’t agency to support waiver request
212(e) Waivers

- Four types of Waivers:
  - No-Objection: statement from your home-country AND organization if receive US gov’t funding or Int’l org. funding
  - IGA: Requires employer to sponsor you and submit application to US gov’t agency to support waiver request
  - Hardship to US Citizen parent or spouse: Must be extreme hardship (more than just separation) - economic harm, medical issues, mental health issues, trouble in home country, family ties)
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- Hardship to US Citizen parent or spouse: Must be extreme hardship (more than just separation) - economic harm, medical issues, mental health issues, trouble in home country, family ties)
- Persecution: You would face persecution if sent back to home country
H-1b Visa
H-1b Visa

- Requirements: You must have a bachelor's degree or higher and the position must require someone with a bachelor’s degree in a particular area or areas (that matches your degree)
H-1b Visa

- Requirements: You must have a bachelor's degree or higher and the position must require someone with a bachelor’s degree in a particular area or areas (that matches your degree)
- Cap Exemptions: University, Gov't Research Organization, Related Non-Profit
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- Requirements: You must have a bachelor's degree or higher and the position must require someone with a bachelor's degree in a particular area or areas (that matches your degree)

- Cap Exemptions: University, Gov't Research Organization, Related Non-Profit
  
  - Also - Working for private company BUT physically housed at exempt org.
**H-1b Visa**

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- **Cap Exemptions:** University, Gov't Research Organization, Related Non-Profit
  - Also - Working for private company BUT physically housed at exempt org.
  - Have H-1b at exempt organization and, while maintaining that H, receive new part time H at a for profit company.
H-1b Visa

- Requirements: You must have a bachelors degree or higher and the position must require someone with a bachelor’s degree in a particular area or areas (that matches your degree)

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- H-1b is dual intent and can be maintained up until the day you get GC
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  - Have H-1b at exempt organization and, while maintaining that H, receive new part time H at a for profit company

- H-1b is dual intent and can be maintained up until the day you get GC

- Otherwise need alternatives: O-Visa, TN VISA, E-Visa
O-Visa
O-Visa

- The O-1 visa is a temporary work visa available to those foreign nationals who have "extraordinary ability in the sciences, arts, education, business or athletics" which "have been demonstrated by sustained national or international acclaim."
O-Visa

- The O-1 visa is a temporary work visa available to those foreign nationals who have "extraordinary ability in the sciences, arts, education, business or athletics" which "have been demonstrated by sustained national or international acclaim."

- The person entering the US must be coming to work in their field of ability, but the position need not require the services of a person of extraordinary ability.
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As with the H-Visa, a scientist on the O-Visa is being sponsored by the employer. Unlike the H-Visa, there is no maximum amount of time a person can remain on an O-Visa, nor is there a cap issue.
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The O Visa is Dual-Intent
E-Visa
E-Visa

- To qualify for an E-2 investor visa, the applicant must "develop and direct operations of an enterprise in which he or she has invested or is actively in the process of investing a substantial amount of capital." As a foreign citizen, you may be issued an E-2 nonimmigrant visa if all of the following requirements are met:
E-Visa

- To qualify for an E-2 investor visa, the applicant must "develop and direct operations of an enterprise in which he or she has invested or is actively in the process of investing a substantial amount of capital." As a foreign citizen, you may be issued an E-2 nonimmigrant visa if all of the following requirements are met:
  - You are from a country which is eligible for an E-2 Visa and at least 50% of the company stock must be owned by you;
E-Visa

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  - You are from a country which is eligible for an E-2 Visa and at least 50% of the company stock must be owned by you;
  - You will invest or have invested substantial capital which is at risk, meaning subject to potential loss if the business does not succeed, in a bona fide enterprise in the United States.
TN Visa
TN Visa

- TN Visa is available to Canadian and Mexican citizens for certain professional positions
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- Initial TN good for one year. Renewable in One Year Increments.
TN Visa

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- Initial TN good for one year. Renewable in One Year Increments.
- Proposed rule by USCIS to make initial and renewals good for 3 years.
IMMIGRANT VISAS
Extraordinary Ability
A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), OR at least three of the following:
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- Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or field
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- Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought;
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- Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought;
- Evidence of the alien’s participation, either individually or on a panel, as a judge of work of others in the same or an allied field of specification for which classification is sought;
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• Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought;
• Evidence of the alien’s participation, either individually or on a panel, as a judge of work of others in the same or an allied field of specification for which classification is sought;
• Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
Extraordinary Con’t
Extraordinary Con’t

- Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
Extraordinary Con’t

- Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- Evidence of the display of the alien’s work in the field at exhibitions;
Extraordinary Con’t

- Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- Evidence of the display of the alien’s work in the field at exhibitions;
- Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
Extraordinary Con’t

- Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- Evidence of the display of the alien’s work in the field at exhibitions;
- Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
Extraordinary Con’t

- Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- Evidence of the display of the alien’s work in the field at exhibitions;
- Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- Evidence of commercial successes in the performing arts.
Extraordinary Con’t

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• Evidence of the display of the alien’s work in the field at exhibitions;
• Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
• Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
• Evidence of commercial successes in the performing arts.

• If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.
Extraordinary Con’t

- Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- Evidence of the display of the alien’s work in the field at exhibitions;
- Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- Evidence of commercial successes in the performing arts.

- If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.
- **NO OFFER OF EMPLOYMENT IS NEEDED**, however, the petition must be accompanied by evidence that the alien is coming to the United States to
National Interest Waiver
National Interest Waiver

- Preliminary Requirement - Must have an Advanced Degree or Exceptional Ability
National Interest Waiver

- Preliminary Requirement - Must have an Advanced Degree or Exceptional Ability
  - Advanced Degree - Any degree above bachelor’s degree (or a bachelor’s degree plus 5 years experience).
National Interest Waiver

- Preliminary Requirement - Must have an Advanced Degree or Exceptional Ability
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  - Exceptional Ability - list of criteria show that you meet 3
National Interest Waiver

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- NIW Standards:
National Interest Waiver

- Preliminary Requirement - Must have an Advanced Degree or Exceptional Ability
  - Advanced Degree - Any degree above bachelor’s degree (or a bachelor’s degree plus 5 years experience).
  - Exceptional Ability - list of criteria show that you meet 3
- NIW Standards:
  - Show that your work has Substantial Intrinsic Merit
National Interest Waiver

- Preliminary Requirement - Must have an Advanced Degree or Exceptional Ability
  - Advanced Degree - Any degree above bachelor’s degree (or a bachelor’s degree plus 5 years experience).
  - Exceptional Ability - list of criteria show that you meet 3
- NIW Standards:
  - Show that your work has Substantial Intrinsic Merit
  - Show that the benefit of work is national in scope
National Interest Waiver

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  - Advanced Degree - Any degree above bachelor’s degree (or a bachelor’s degree plus 5 years experience).
  - Exceptional Ability - list of criteria show that you meet 3
- NIW Standards:
  - Show that your work has Substantial Intrinsic Merit
  - Show that the benefit of work is national in scope
  - Show that you would serve the National Interest to a substantially greater degree than a U.S. Citizen with minimum qualifications
Employment Sponsored
Employment Sponsored

- Outstanding Researcher (EB-1)
  - No Advertising
  - 6 criteria, show you meet 2, 3 years experience
  - Employer must show at least 3 full time employees and
  - Position is “Permanent” (includes tenure, tenure track, at-will, etc.)

- PERM
  - Employer advertises position, sees if any qualified US Cit. or Perm. Residents apply, file with DOl then USCIS
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