

National Interest Waiver: Everything You Need to Know About the NIW

The national interest waiver (NIW) is a powerful option for certain highly qualified people to get a green card to the United States through self-petition. With an approved national interest waiver, someone can get a green card without having a job offer.

In this guide, I will explain what you need to know about the national interest waiver. If you have any questions, feel free to email me directly at Info@immigrationlawfirmlltd.com. I'm very responsive via email and I would be happy to help you.

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1. Introduction to the National Interest Waiver

The process of getting an employer sponsored green card to the United States is usually a long and difficult process. In most cases, the U.S. company must show that they tried to hire a U.S. worker and that they were unable to do so. The company is required to post ads, interview candidates, and then must get approval from the U.S. Department of Labor to be able to hire a

foreign worker. This process can get very complicated, time-consuming, and expensive. Therefore, many employers are unwilling to sponsor foreign workers for a green card.

The good news is that there are certain options for you to apply for a green card through self-petition. This means that you can apply for your green card **without a job offer from a U.S. company and without a company acting as your sponsor.**

One of these options is called the National Interest Waiver (NIW). The national interest waiver is available under the EB-2 immigrant category. Through the national interest waiver, certain people with skills and abilities in the field of science, arts, business, and/or certain other professions may self-petition for a green card.

Through the national interest waiver, the requirements that you have a full-time job offer and that you have a U.S. employer sponsor you, are **waived**.

2. Benefits of NIW

2.1 Ability to Self-Petition

As mentioned above, one of the primary benefits of the EB2 national interest waiver is the ability to self-petition for your green card. Through the national interest waiver, you do not need to go through the hassle of finding a U.S. employer that is willing to sponsor your immigrant petition. Another benefit is that through the national interest waiver, you can avoid the labor certification process altogether.

2.2 Speed

Another primary benefit of the national interest waiver is the speed of the process. Through a traditional employer-sponsored green card, the process can be very long. The employer has to undergo various recruitment activities and must also obtain an approved labor certification from the Department of Labor. This process alone can take several months to complete. However, the benefit of the EB2 national interest waiver is that there is no need to go through the labor certification process. You can file your immigrant petition

directly which saves a tremendous amount of time.

3. National Interest Waiver Requirements

There are 4 main requirements to qualify for EB2 NIW:

3.1 You must qualify under the EB2 immigrant category

3.2 Your proposed endeavor in the U.S. must have substantial merit and national importance

3.3 You must be well positioned to advance the proposed endeavor

3.4 You must show that, on balance, it would be beneficial to the United States to waive the requirement that you have a job offer and that a U.S. company undergo the labor certification process.

3.1 Qualify Under the EB2 Immigrant Category

The EB2 national interest waiver is a special provision only available under the EB2 immigrant category. Basically, the NIW is an addition set of requirements above and beyond the EB2 requirements. Therefore, in order to qualify for a national interest waiver, you must first qualify under EB2. There are 2 main ways that you can qualify under the EB2 category. You may qualify under EB2 as either an advance degree professional or as an individual of exceptional ability.

Advance Degree Professional

To qualify as an advance degree professional, you must show the following:

- The field you plan to work in must require an advanced degree

AND

- You must possess an advanced degree (any degree above a baccalaureate degree) **OR** you must have a baccalaureate degree plus 5 years of progressive work experience in the field you plan to work in.

Exceptional Ability

To qualify for EB2 based on exceptional ability, you must satisfy at least 3 of the following:

- 10 years of full-time experience in your field
- Degree in your field
- License to practice in your profession
- Membership in professional associations
- Salary/remuneration that demonstrates exceptional ability
- Recognition of your achievements and significant contributions to your field by peers, governmental entities, or professional business organizations.

3.2 Proposed Endeavor in the U.S. Must Have Substantial Merit and National Importance

To qualify for a national interest waiver, you must demonstrate that your proposed endeavor has both substantial merit and national importance. It is very important to clearly demonstrate that both of these prongs are satisfied.

Substantial Merit

- Substantial merit means that the work that you will be engaging in, while in the U.S., is in a field that is valuable to the national interest of the U.S.
- The evidence of substantial merit should focus on the specific endeavor that you will be focusing on. For example, if you are a specialist in pediatric orthopedic surgery, you should define the endeavor as pediatric orthopedic surgery rather than “medicine” or “surgery.”
- You may show substantial merit in many different industries such as science, technology, entrepreneurialism, culture, health, business, or education.

National Importance

When determining whether your endeavor has national importance, USCIS considers the potential prospective impact. USCIS is looking for evidence of the following:

- Does your endeavor have national or even global implications within your particular field?
- Does your endeavor have significant potential to employ U.S. workers or does it have other substantial positive economic effects?

Regarding national importance, it is important to know that USCIS is not so much focused on the geographic impact of your endeavor, even people who will work in an area with local or regional impact may qualify for EB2 NIW.

3.3 You Must be Well Positioned to Advance the Proposed Endeavor

To qualify for a national interest waiver, you must demonstrate that you are well positioned to advance your proposed endeavor.

When determining whether you satisfy this requirement, USCIS is looking to see your potential to contribute to the national interest based on your prospective work in the field.

Here are some factors USCIS uses to determine whether you satisfy this requirement:

- education
- skills
- knowledge
- record of success in related or similar efforts
- model or plan for future activities
- any progress towards achieving your proposed endeavor
- interest from potential customers, users, investors, or other relevant entities or individuals

To satisfy this requirement, you are not required to show that it is more likely than not that you will be successful. Rather, you must show how **you are qualified** to pursue a successful result.

3.4 You Must Show that, on Balance, it would be Beneficial to the United States to Waive the Requirements of a Job Offer and Thus of a Labor Certification

When determining whether or not you satisfy this requirement, USCIS weighs the following:

- Whether it would be impractical for you to secure a job offer
- Whether it would be impractical for your prospective employer to obtain a labor certification
- Whether, even if other qualified U.S. workers are available, the U.S. would still benefit from your contributions
- Whether the national interest in your contributions is sufficiently urgent to warrant forgoing the labor certification process.

In each case, all of these factors are weighted together to determine whether it would be beneficial to waive the requirements of a job offer and thus of a labor certification.

4. Required Documents to Apply for a National Interest Waiver

There are many different types of documents that should be included in your application for a national interest waiver. The documents that you will include will depend on the specific circumstances of your case. Before making any decisions regarding what documents to submit with your case, it is important to consult with an experienced immigration lawyer.

Here is a general list of some of the documents that may be included:

- Copies of your educational degrees
- Evidence of exceptional ability (if applicable)

- Curriculum Vitae (CV)
- Citation report
- Link to Google Scholar profile
- Publications, articles, books that you have authored
- Evidence of prizes or awards that you have received
- Evidence that you have reviewed the work of others
- Published material about you/your field of endeavor
- Evidence of the receipt of grants/patents
- Copy of the biographic page of your passport
- Testimonials from experts in your field

5. National Interest Waiver Process

Step 1. Consult with an Immigrant Lawyer

The first step in the NIW process is to consult with an experienced immigration lawyer. It is important to consult with an immigration lawyer for the following reasons:

- An experienced immigration lawyer can review your credentials and provide you with an analysis regarding the likelihood of approval of your case.
- An immigration lawyer can review your background and immigration history to determine whether there may be a better option for you to get your green card.

- Applying for a national interest waiver can be extremely complicated. Each NIW case requires a detailed strategy for how to prove that you satisfy each of the NIW requirements. An experienced immigration lawyer will help you develop a strategy for successfully applying for your EB-2 national interest waiver.

Step 2. File Form I-140 with USCIS

The Form I-140 is also called the Immigrant Petition for Alien Worker. This is the initial form that must be filed with USCIS to apply for a green card under EB2 NIW.

Along with the Form I-140, your immigration lawyer will prepare a detailed cover letter explaining your case and your eligibility for a national interest waiver. In addition, all of the documentation in support of your eligibility for a national interest waiver will also be included with the Form I-140.

Step 3. Either Adjustment of Status or Visa Processing

Once your Form I-140 is approved and a visa number is available for you, the next step will be to either do an adjustment of status or to undergo immigrant visa processing. Each of these options is different. I will example the differences below.

Adjustment of Status

- An adjustment of status is when someone “adjusts” from a non-immigrant status to lawful permanent resident status.
- In order to do an adjustment of status, you must be lawfully present in the United States in a valid non-immigrant status.
- An adjustment of status is done by filing a Form I-485 with USCIS

- The adjustment of status process takes place within the United States (no need to leave the U.S.)
- If the priority date is current at the time of filing the Form I-140, you may **concurrently** file the Form I-485 adjustment of status along with the I-140.

Immigrant Visa Processing

- Immigrant visa processing is when someone applies for an immigrant visa at a consulate or embassy outside of the United States
- Immigrant visa processing is typically done when someone is not lawfully present in the U.S. in a valid non-immigrant status
- Immigrant visa processing is done by electronically filing a DS-260 with the Department of State
- As part of the process of immigrant visa processing, you must attend a visa interview at a consulate abroad
- Following successful completion of the interview, you should receive your immigrant visa within a few days
- Once you enter the U.S. on your immigrant visa, you are officially a U.S. lawful permanent resident.

7. National Interest Waiver Fees

Here are the USCIS filing fees for each step of the EB2 NIW process:

Filing Fee for Form I-140: \$700

Filing Fee for Form I-485 (Adjustment of Status): \$1,225

Premium Processing Fee: Optional \$1,410

8. National Interest Waiver Processing Time

The overall processing time to receive your green card through EB-2 NIW will depend on multiple factors. Please see below for the different scenarios.

Concurrent Filing of Form I-140 and Form I-485 (Adjustment of Status)

If you are lawfully present in the U.S. in a valid non-immigrant status, and if a visa number is available, you may be eligible to concurrently file your Form I-140 and Form I-485. In this case, you should receive your work authorization (EAD) and travel permission (advance parole) within 6 months. You should receive your green card within about 8-9 months.

Immigrant Visa Processing with Current Priority Date

If you are not lawfully present in the U.S. and will be doing immigrant visa processing, you will first have to file the I-140 with USCIS. Once the I-140 is approved, you can then undergo immigrant visa processing. The I-140 takes about 7-8 months to get approved. Once the I-140 is approved, assuming a visa number is available (current priority date) you can then begin immigrant visa processing which takes an additional 7-9 months. So, the total processing time would be about 14-17 months.

Priority Date Note Current (Visa Backlog)

For countries like India and China, there is a very high demand for visas under the EB2 category. The demand is higher than the number of visas available, and so there is visa retrogression (visa backlog). What this means is that, for certain countries, there is a waiting list for people to get a visa

under the EB-2 category. If you were born in a country that has a visa backlog, once your I-140 petition is approved, you will have to wait for a visa number to become available (wait for your priority date to become current) before you can apply for your immigrant visa or adjustment of status. If this applies to you, the total time it takes to get your green card can be many years.

9. Conclusion

The EB2 national interest waiver is a great option for you to get lawful permanent residence (a green card) to the United States, without the need for a job offer. Through the EB2 national interest waiver, you can self-petition for your green card and also apply for your spouse and unmarried children under 21 years old.

The EB-2 NIW has a high-standard that you must meet in order to get your case approved. It is therefore very important to work with an experienced lawyer to prepare and file your EB2 - NIW application.

If you have any questions about the EB-2 NIW, please feel free to email me directly at Info@immigrationlawfirmlltd.com I'm a U.S. immigration lawyer, and I would be happy to help you.