



IPSO International Quarterly UPDATE

WHEN TRAVELING In H-1 Status. . . Advice from IPSO

OBTAINING A VISA

You will need a valid visa in your passport to enter or reenter the U.S. If you need a new visa, you will need to apply at a U.S. embassy or consulate. To find more information on specific embassies and their services and procedures, consult the U.S. DOS website at: <http://www.usembassy.gov/>

You are responsible for preparing your own forms and paying your own fees for documents prior to meeting with the consular officials.

Your visa application may be selected for a security check. Most scientists and clinicians will be subject to this check. These security checks might delay the granting of your entry visa for 30-60 days or more. This is a security clearance and cannot be expedited. Please plan your travels and advise your department accordingly.

VISA vs. STATUS

There is a difference between a visa and a status. A visa is the photo document in your passport issued by the U.S. DOS. It serves as a "ticket" to ensure that you can board the plane to the U.S. Your status is the category in which you are admitted to the U.S. and also determines the period of time you may remain in the U.S.

ENTERING THE U.S.

In H-1B status, you may enter the U.S. with a valid H-1B visa and an original I-797 approval notice. In most cases, you and your dependents should be admitted for the duration of the approval notice.

Upon entry into the U.S., you will complete an I-94 Arrival/Departure Record for U.S. Customs and Border Protection (CBP). The CBP will stamp a date on the I-94 and in your passport. This date should

Before you travel . . .

We recommend that current MCG employees in H-1B, TN, E-3 or O-1 status and pending permanent residents notify IPSO in advance of making any international travel plans.

match the expiration date on your I-797A approval notice. If the date CBP stamp is earlier or later than the I-797A expiration date, please ask the officer for an explanation. Also, inspect your I-94 before leaving the immigration admissions area, to ensure that the officer has written on the correct visa classification (H-1B). Dependents (H-4s) traveling separately should especially note whether their I-94 date stamp

coincides with the H-1B family member. Every time you or your family members enter the U.S. please send IPSO a copy of the front and back of the Form I-94 issued to you so that we may review it and track your immigration status. CBP Website: http://www.cbp.gov/xp/cgov/travel/id_visa/i-94_instructions/filling_out_i94.xml

MAINTAINING YOUR PASSPORT

ALL employees should take care to renew passports approaching expiration as early as possible. Travel on passports approaching expiration within 3 years can result in the issuance of an I-94 which expires earlier than the expiration date of the I-797A approval notice. Since the I-94 date determines your period of authorized stay in the U.S., earlier expirations would require early termination of your employment or early H-1B status extensions at the expense of your hiring unit.

DOCUMENTING YOUR TRAVEL

Any time you spend outside the U.S. does not count towards your total 6 years in H-1B status. So you should retain documentation (airline tickets, itineraries, passport stamps, etc.) of time you have spent out of the U.S. while in H-1B status.

PERMANENT RESIDENCY

There are many roads to permanent residency—three are discussed below.

1. National Interest Waiver: Do You Qualify?

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The second employment-based preference (EB-2) permits (1) *foreign nationals with advanced degrees* and (2) *foreign nationals of exceptional ability* whose work is in the national interest to apply for permanent resident status. The national interest waiver (NIW) is a *waiver of the job offer requirement (labor certification)* for individuals who wish to immigrate to the United States under the second employment-based preference. The standards of approval of a NIW may be stated in a three-part test:

- a. The alien must show that he/she seeks employment in an “area of substantial intrinsic merit.”
- b. The proposed benefit is “national in scope” – the impact of the activity must be felt on a national scale.
- c. The petitioner must demonstrate that the national interest would be adversely affected if labor certification were required for the alien.

Both professionals with advanced degrees and people with exceptional ability may seek waivers of the job offer requirement which will amount to a waiver of the labor certification requirement as well. In addition, clinical physicians are also eligible for a special national-interest waiver when certain criteria are met.

Professionals with Advanced Degree Those seeking classification as professionals with advanced degrees are required to have a degree above a bachelor’s or, in the alternative, a bachelor’s degree plus five years of “progressive” post baccalaureate work experience in a profession to equal a master’s degree. A position should qualify for EB-2 classification as long as the minimum requirement for the job offered is a master’s degree or equivalent. For a doctoral degree required by the occupation, work experience equivalent is not permitted.

Exceptional Ability The exceptional ability category is limited by USCIS to those working in the sciences, arts, and business. The regulations require exceptional-ability applicants to present evidence of meeting three of the six criteria set forth by USCIS. In addition to providing three of the six criteria, testimony from prominent experts about the applicant is highly important for showing exceptional ability.

National Interest Waiver For national interest waivers, USCIS will look to see whether “the alien’s past record justifies projections of future benefits to the national interest.” The alien must have an impressive record of individual achievement and be engaged in activity that has, or potentially has, widespread impact. Expert testimony about the applicant’s outstanding work and attributes is crucial to a successful petition. Such testimonials should not be by people who personally know the applicant but from independent experts. Examples of successful national interest waiver petitions have included: Chemist-Researcher, Coach (Sculling), Director of Research and Development, Engineer, Medical Researcher, Neuroscientist, Postdoctoral Researcher, Postdoctoral Fellow, Research Associate, Rudder Design Engineer, Software Manager, Television Reporter, and Venture Capitalist.

Clinical Physicians A special statutory provision was created for clinical physicians seeking national interest waivers. The normal national interest waiver rules do not apply to clinical physicians serving in an underserved area and, indicating a commitment to work for five years in a federally-designated underserved area along with a letter from a federal or state agency describing the physician’s work as in the public interest.

Conclusion Talented and qualified individuals may not realize that they may qualify for permanent residence under the EB-2 category. The benefit of applying for a National Interest Waiver is that the process bypasses the lengthy and complicated labor certification process. Furthermore, individuals seeking a national interest waiver may self-petition. Applying for an EB-2 classification can be tricky and confusing. Adding a NIW petition can increase the complexity of the process. However, the difficulty of the process should not preclude exceptional and advanced degree individuals from applying for the benefit. Please feel free to email me at sarah@pvblaw.com for questions and inquiries about EB-2 and National Interest Waivers.

2. Military Accessions Vital To National Interest (MAVNI) Recruitment

The Secretary of Defense has authorized the military services to recruit certain legal aliens whose skills are considered to be vital to the national interest. Those holding critical skills – physicians, nurses, and certain experts in language with associated cultural backgrounds – would be eligible. To determine its value in enhancing military readiness, the limited pilot program will recruit up to 1,000 people, and will continue for a period of up to 12 months. For more details go to the following web link: <http://www.defenselink.mil/news/mavni-fact-sheet.pdf>

3. Diversity Immigrant Visa Lottery-

This program is a congressionally-mandated lottery to secure permanent residency. The lottery is administered on an annual basis by the U.S. DOS and makes available 50,000 permanent resident visas annually to persons from countries with low rates of immigration to the U.S. For more information, visit the U.S. DOS website at: http://travel.state.gov/visa/immigrants/types/types_1322.html

An Important Note About J-1 Status and Permanent Residency

In 1998, the INS (legacy of U.S.CIS) issued a memo which stated, in part, that the Immigration Service will accept adjustment of status applications (I-485) from aliens who are subject to the 2-year foreign residence requirement of section 212(e) of the INA provided that the United States Information Agency (USIA) has recommended a waiver of such foreign residence. A copy of the USIA recommendation must be attached to the alien's application for adjustment of status. The USIA no longer governs the J-1 waiver process. It is now governed by the U.S. DOS. If you are in **J-1 status** and you anticipate approval of your waiver request; and you are otherwise eligible for permanent residency, you may want to consider moving forward without taking the step of applying for H-1B status.

Pending Permanent Residents Should Take Note That...

- U.S.CIS Headquarters has instructed the Texas and Nebraska Service Centers to deny pending I-485 applications upon denial of the underlying I-140 petition. U.S.CIS previously had expressed this policy in a February 2003 Memorandum from William R. Yates, "Procedures for Concurrently Filed Family-Based or Employment-Based Form I-485 when the Underlying Visa Petition is Denied". TSC has been taking the discretion to wait 30 days before denying the I-485 applications. **Now, both Texas and Nebraska Service Centers will deny I-485 applications when they deny an I-140 petition.**
- U.S.CIS recently reminded applicants for Adjustment of Status to obtain an Advance Parole document before traveling abroad. The **Advance Parole** document allows an applicant to re-enter the U.S. after traveling abroad. To obtain Advance Parole, individuals must file Form I-131, Application for Travel Document well in advance of their travel plans (a minimum of 90 days before departure). Failure to file the I-131 and obtain advance parole approval before leaving the U.S. could result in an individual not being able to re-enter.

USCIS Has A New User Friendly Website Format

Visit the new sites at www.uscis.gov and www.uscis.gov/espanol

SAFETY TIPS

Here are a few safety tips for you to consider. Much of the advice is common sense, but it can make a real difference. You can make yourself safer and protect your family, home, and belongings by following these simple suggestions.

WHEN OUT AND ABOUT

- **Be Alert**—Always be aware of your surroundings.
- **Don't accept nor offer rides to strangers..**
- **Avoid walking alone at night.**

At MCG use the public safety escort service when leaving work after dark. Employees are encouraged to take advantage of this service available on a 24-hour basis. Call **706-721-2911** for further information.

PERSONAL ID INFORMATION

- **Always protect personal information like social security numbers and credit card numbers.**
- **It's a good idea to keep copies of your passport, visa, I-94 and other important documents**
- **Beware of internet scams (“phishing”)**—Never give out banking or personal identification information online unless you are absolutely certain the site is legitimate and secure.

VALUABLES

- **Never, ever leave your personal belongings (i.e. purse, personal computer, cell phone, etc.) unattended.**
- **Never leave wallets, purses, computers or other valuables on the seat of your parked car.**

AT HOME

- **Always lock your door and windows while you are at home or away**
- **Never open the door for strangers**—it's acceptable in American culture to talk through doors without opening them if you don't know the person. If the person has not been invited, don't open the door unless it is a law enforcement official. Look out of your window or through the door's “peep” hole to confirm identity. Even then, have the officer show you his or her official badge.

Be safe!