
H-1B and Permanent Residency Pathways

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H-1B Specialty Occupations

H-1B – A temporary working status for non-immigrants with positions that qualify as a specialty occupation (limit 6 years). A specialty occupation is defined by U.S. immigration regulation as an occupation "which requires a theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation." 214.2(h)(4)(i)(A)(1).

An H-1B “specialty occupation” refers to a job that requires a specific set of specialized skills, knowledge, and educational qualifications. The position normally requires at least a **bachelor’s degree or higher** in a specified field of study, and the employee must have the required degree or the equivalent combination of education and experience. Examine whether it is the usual practice in an industry to require a specific educational degree. For example, doctor with a medical degree or an accountant with an accounting degree would meet the specialty occupation criterion. To qualify for H-1B, your job must require a degree in the field you studied.

Private Sector- Cap-Subject H-1B Lottery

The initial registration period for the FY2026 H-1B Cap Lottery will open at noon Eastern Time (EST) on March 7, 2025, and run through noon (EST) on March 24, 2025. USCIS intends to notify account holders of selections by March 31, 2025. H-1B CAP Registration filing fees paid by employers are increasing this year from \$10.00 to \$215.00.

USCIS will run the random selection process from the electronic registrations and determine which registrants will be eligible to file H-1B cap-subject petitions for the 65,000 available slots. USCIS will then select an additional 20,000 registrants reserved for those with an advanced degree from a U.S. college or university. Once selected in the random lottery, eligible registrants will then submit complete H-1B cap-subject petitions with all supporting documents to USCIS usually on April 1 with the H-1B beginning on October 1.

H-1B for Cap Exempt Employers

The lottery would also not apply to a foreign national working for a cap exempt employer (an institution of higher education, a related or affiliated nonprofit entity, a nonprofit research organization, or a government research organization). Cap exempt employers (e.g. UK) can apply for an H-1B anytime without any numerical restrictions.

The H-1 beneficiary has “dual intent” which allows you to apply for permanent residency while in H-1B status. You can travel on H-1B while your I-485 adjustment of status petition is pending. It is important to maintain underlying status.

Permanent Residence

The right to live and work permanently in the U.S. for any employer. A person becomes a permanent resident through adjustment of status in the U.S. or issuance of an immigrant visa outside the U.S. A person generally must maintain lawful status in order to adjust in the U.S.

You can jeopardize permanent residence by obtaining PR by fraud, any absence of over six months from the U.S., abandonment of residence in the U.S., or certain types of criminal conduct.


Citizenship can occur 3 or 5 years after being a permanent resident.

EB-1A, Extraordinary Ability

This is based on merit and does not require a labor certification. “Risen to the very top of field or endeavor.”

You must be able to demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim. You can self sponsor but more difficult to obtain.

You must meet at least 3 of the 10 criteria* below, or provide evidence of a one-time achievement (i.e., Pulitzer, Oscar, Olympic Medal) as well as evidence showing that you will be continuing to work in the area of your expertise. **No offer of employment or labor certification is required.**




Criteria for Demonstrating Extraordinary Ability

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
- Evidence of your membership in associations in the field which demand outstanding achievement of their members
- Evidence of published material about you in professional or major trade publications or other major media
- Evidence that you have been asked to judge the work of others, either individually or on a panel
- Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
- Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
- Evidence of your performance of a leading or critical role in distinguished organizations
- Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
- Evidence of your commercial successes in the performing arts

EB-1B, Outstanding Professors and Researchers

You must demonstrate international recognition for your outstanding achievements in a particular academic field. You must have at least 3 years experience in teaching or research in that academic area. You must be entering the United States in order to pursue tenure or tenure track teaching or a comparable permanent research position at a university, institution of higher education, or private employer. Be “international renown.”

You must meet at least 2 of the 6 criteria listed below and provide an offer of employment from the prospective U.S. employer. The private employer must show documented accomplishments and that it employs at least 3 full-time researchers. No labor certification is required.



In order to demonstrate you are an outstanding professor or researcher, you must include evidence of 2 of the 6 listed criteria below (or comparable evidence if any of the criteria do not readily apply):

- Evidence of receipt of major prizes or awards for outstanding achievement
- Evidence of membership in associations that require their members to demonstrate outstanding achievement
- Evidence of published material in professional publications written by others about the alien's work in the academic field
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
- Evidence of original scientific or scholarly research contributions in the field
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

EB-2, National Interest Waiver

Can be self-sponsored or employer sponsored petition. Avoids the filing of a labor certification if it is in the national interest to do so.

As an initial matter, a petitioner must demonstrate the beneficiary's qualifications for the EB-2 classification by establishing that the beneficiary is either a member of the profession holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business.

Specifically, the petition must establish by a preponderance of the evidence that the occupation is one for which a U.S. bachelor's degree or its foreign degree equivalent is the minimum requirement for entry into the occupation.

USCIS clarified that beneficiaries who seek to qualify as an advanced degree professional based on a bachelor's degree plus five years of progressive experience in the specialty must obtain the requisite five years of progressive experience after completion of the bachelor's degree or foreign equivalent degree.

Moreover, the petitioner must show that the progressive experience is related to the bachelor's degree or foreign equivalent degree.

National Interest Waiver-Three Prong Test

First Prong: The Proposed Endeavor has both Substantial Merit and National Importance.

The petitioner must demonstrate that waiving the job offer and labor certification requirements would benefit the United States by providing substantive information that explains the direct impact of the endeavor and how the endeavor would be furthered “through the course of the person’s duties at a particular employer or some other way.”

A person must demonstrate their own individual endeavor is of national interest on a broader scale. The analysis will evaluate whether the petitioner has provided sufficient evidence to demonstrate how the proposed endeavor aligns with the criteria for national importance. Examples include new medical treatment or drugs for chronic conditions. Developing cyber security used nationwide and the U.S. government. Addressing mental health issues facing Olympic athletes and how to treat their stress.

Second and Third Prong for NIW

Second Prong: The Person is Well Positioned to Advance the Proposed Endeavor.

The persuasiveness of letters from experts in the person's field if they are from experts that have "first-hand knowledge" of the person's achievements and can explain how the beneficiary is well positioned to advance the endeavor, *as long as* the letter is supported by independent corroborative evidence. Business plans are also considered "useful" but should be supported by other "independent" evidence.

Education, work experience, publications, abstracts, speaker at national and international conferences, peer review, clinical trials, grants and patents are examples additional evidence to present to meet this prong..

Third Prong: On balance, it would be beneficial to the United States to waive the job offer and thus the permanent labor certification requirements.

Whether the labor certification process may prevent an employer from hiring a person with unique knowledge or skills exceeding the minimum requirements standard for that occupation which cannot be appropriately captured by the labor certification. The benefit to the U.S. from the foreign national's contributions even if U.S. workers are available. The national interest in the person's contributions is sufficiently urgent, such as U.S. competitiveness in STEM fields.

NIW and STEM Fields

There are specific evidentiary considerations relating to STEM degrees and fields, although the analysis is the same regardless of endeavor, so these considerations may apply in non-STEM endeavors where the petitioner demonstrates that such considerations are applicable.

Persons with a Ph.D. in a STEM field, as well as certain other persons with advanced STEM degrees relating to the proposed endeavor, have scientific knowledge in a narrow STEM area since doctoral dissertations and some master's theses concentrate on a particularized subject matter. Officers should then consider whether that specific STEM area relates to the proposed endeavor. Even when the area of concentration is in a theoretical STEM area (theoretical mathematics or physics, for example), it may further U.S. competitiveness or national security as described in the proposed endeavor.

Reviewers may find that a STEM area is important to competitiveness or security in a variety of circumstances, for example, when the evidence in the record demonstrates that an endeavor will help the United States to remain ahead of strategic competitors or current and potential adversaries, or relates to a field, including those that are research and development-intensive industries where appropriate activity and investment, both early and later in the development cycle, may contribute to the United States achieving or maintaining technology leadership or peer status among allies and partners.

The benefit is especially weighty where the endeavor has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested U.S. government agencies

O-1, Individuals with Extraordinary Ability or Achievement

O-1A- for applicants in the sciences, education, business, or athletics It does require a petitioner (meaning a sponsor), which can be an employer or an agent. One cannot self-petition.

The O-1 requires an applicant to satisfy three (3) criteria, unless the applicant has won a major award:

- Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- Membership in associations in the field that require outstanding achievements of their members
- Published material in professional or major trade publications or major media about the applicant, related to the applicant's work

O1-A, Criteria

- Applicant's judging the work of others in the same field
- Applicant's original scientific, scholarly, or business-related contributions of major significance in the field
- Authorship of scholarly articles by applicant in the field, in professional journals, or other major media
- Performance in a critical or essential capacity for organizations and establishments that have a distinguished reputation
- Command of a high salary or other significantly high remuneration compared to others in the field

PERM, Labor Certification- EB-2 and EB-3

Steps involved for PERM (labor certification)

1. Prevailing Wage Determination (6-7 months).
2. Advertising/Test of the Labor Market-Used to determine if there are any qualified U.S. workers for the position.
3. PERM-Certification from the U.S. Department of Labor that the employer cannot find any U.S. worker who is “able, willing and qualified” to do the job. U.S. workers include U.S. citizens, permanent residents, asylees and refugees. (13-15 months).
4. I-140 and I-485 if priority date is current.

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| Employment-based | All Charge Areas Except Those Listed | CHINA - mainland born | INDIA | MEXICO | PHILIPPINES |
|------------------|--------------------------------------|-----------------------|---------|---------|-------------|
| 1st | C | 08NOV22 | 15FEB22 | C | C |
| 2nd | 22JUN23 | 01OCT20 | 01JAN13 | 22JUN23 | 22JUN23 |
| 3rd | 01JAN23 | 01NOV20 | 01APR13 | 01JAN23 | 01JAN23 |