OVERVIEW PROGRAM ON PERMANENT RESIDENCE

University of California San Francisco

By

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OR…

IMMIGRATION LAW IN AN ERA OF CHANGE
PURPOSE OF PROGRAM

To provide UCSF personnel with an understanding of the fundamentals of U.S. immigration law – particularly, strategies and considerations related to Permanent Residence.
BASIC CONCEPTS OF IMMIGRATION LAW
RULE #1
The United States as a Sovereign Nation has the right to control and restrict the presence of foreign nationals in this country
RULE #2
EVERY LEGAL RESIDENT IN THE U.S. FALLS INTO FOUR CATEGORIES

1. Temporary, Nonimmigrant
2. Permanent Resident
3. U.S. Citizen
4. “Color of Law”
DEFINITION OF TERMS: TEMPORARY, NONIMMIGRANT STATUS

• Limited/finite duration
• Limited, defined scope of activity
• Letter-Number combination
DEFINITION OF TERMS: PERMANENT RESIDENCE

• Unlimited time duration
• Unlimited employment authorization
• Reentry permission following trips abroad
DEFINITION OF TERMS: CITIZENSHIP

Constitutionally protected rights and responsibilities
DEFINITION OF TERMS:
“UNDER COLOR OF LAW”

- Lawful right to reside in the United States
- But not in legal status
- Somewhat like a holding pattern
RULE #3
GENERALLY, FOREIGN NATIONALS NEED SPONSORS, PARTICULARLY FOR PERMANENT RESIDENCE

• Sponsor can be anchor family member
• Sponsor can be employer
• In some rare circumstances, foreign national can self-sponsor if there are highly compelling justifications (e.g., outstanding researchers or critically talented individuals)
RULE #4
WHOLE OBJECTIVE OF IMMIGRATION
IS TO FIT A CASE INTO
PRESCRIBED
IMMIGRATION
CLASSIFICATIONS
THREE (3) PARAMETERS OF IMMIGRATION

- **Substance**: Meeting & Understanding Legal Standards

- **Timeline**: Quotas, Country, & Preference

- **Adjudicator**: Attitude of the USCIS Examiner
CATEGORIES FOR PERMANENT RESIDENCE

• **Family**
  - Certain family relationships with USC or LPR

• **Employment**
  - Employer Sponsored
  - Self-Sponsored

• **Persecution**
  - Asylum or Refugee

• **Special Programs**
  - Diversity Lottery
  - Miscellaneous
### VISA BULLETIN – APRIL 2013

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<th>EMPLOYMENT PREFERENCES</th>
<th>ALL COUNTRIES except:</th>
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<td>5th Investors</td>
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BASICS OF EMPLOYMENT-BASED IMMIGRATION

• Worldwide Quota: 140,000
• Country Limits: 7% (25,620) from any single country
• Special backlogs for India and China (EB2)
• Five-Tier System
RULE #5: WILD CARD:
Comprehensive Immigration Reform
RULE #6:
WHO IS THE IMMIGRATION EXAMINER?
5 Options For Permanent Residence Based On Employment

1. Labor Certification/PERM
2. Special Handling
3. Outstanding Professor & Researcher
4. Alien of Extraordinary Abilities
5. National Interest Waiver
SUBSTANCE:
EMPLOYMENT-BASED IMMIGRATION

- Employer Sponsored
- Self-Sponsored
EMPLOYER SPONSORED

- Labor Certification Application (EB2)
  - Testing U.S. labor market
  - Foreign National fills labor shortage need

- Outstanding Professor and Researcher (EB1)
  - Outstanding academic/research abilities
SELF-SPONSORED

- Aliens of Extraordinary Ability (EB1)
  - Highest & most rigorous standard
  - Top of professional field

- National Interest Waiver (EB2)
  - Benefits to the United States
FIVE TIERS OF EMPLOYMENT-BASED IMMIGRATION

FIRST PREFERENCE:

• Aliens of Extraordinary Ability (self-petition)
• Outstanding Professors & Researchers (requires UCSF sponsorship)
SECOND PREFERENCE:
Advanced Degree Aliens
• Labor Certification Applications (UCSF-sponsored)
• Special Handling (University teachers)
• National Interest Wavier (self-petition)
THIRD PREFERENCE: Professionals/ Skilled Workers
  • Labor Certification Applications

FOURTH PREFERENCE: Special Immigrants
  • Religious Workers
  • Certain Government Workers

FIFTH PREFERENCE: Investors
OPTIONS FOR PERMANENT RESIDENCE USED AT UCSF
OPTION #1
LABOR CERTIFICATION APPLICATION

STEPS TO PROCESS:

• Recruitment / Advertising
• Labor Certification Application (ETA 9089)
• Immigrant Visa Petition (I-140)
• Adjustment of Status Application (I-485)
UNDERLYING POLICY:
Requires UCSF to Advertise/Recruit in a Specified Manner to show that employment of a foreign national at UCSF will not harm the U.S. labor market

- Foreign national needs to be the “best qualified” applicant (teacher) or the only fully qualified applicant (all others)
- Payment of prevailing wage
GOOD POINTS
• Conservative, generally reliable pathway to permanent residence

BAD POINTS
• Time consuming
• Administratively inefficient
• Expensive: Employer needs to pay
• Slow processing time at Department of Labor (2-4 months)
• Second Preference: backlogs for India & China
TIMELINE

- Recruitment: 2-4 months
- L/C Processing: 2-4 months
- I-140 Immigrant Visa Petition:
  - Normal: 4 months
  - Premium Processing: 15 days
- I-485 Adjustment Application
  - Normal: 4-8 months
  - India: 8-year backlog
  - China: 4-year backlog
OPTION #2
SPECIAL HANDLING

DEFINITION: Restricted to University Teachers who file a Labor Certification Application within 18 months of appointment following a faculty recruitment search.
GOOD POINTS

• UCSF can use faculty recruitment material (no need for more recruitment)
• Conservative, reliable pathway

BAD POINTS

• Need to file within 18 months of appointment
• Second preference: backlogs for India & China
• Slow processing time at Department of Labor
OPTION #3
OUTSTANDING PROFESSOR & RESEARCHER (EB1-2)

Underlying Policy:
Confer permanent residence upon outstanding academic figures
FILING PROCEDURE

• UCSF’s Immigrant Visa Petition
• Adjustment of Status Application
HOW TO PROVE A FOREIGN NATIONAL IS OUTSTANDING (2/6)

- Major awards or prizes
- Membership in prestigious organizations
- Published work about individual
- Serves as judge of work of others
- Original scientific or scholarly research
- Publication record
SUB-THEMES

- Preeminent stature of UCSF
- National importance of work
- Strength or outside support letters
GOOD POINTS

• Direct filing (no need to recruit)
• Recognizes outstanding academic achievement
• Option for Premium Processing
• No backlogs in India & China
BAD POINTS

• Needs UCSF sponsorship

• Subjective judgment

• Requires permanent offer of employment for researcher or tenure/tenure-track for faculty
ARCHITECTURE OF CASE

• I-140 Petition
• Mentor’s Letter: Comprehensive Statement
• Outside Support Letters
• Evidence of Outstanding Achievement
OPTION #4

ALIENS OF EXTRAORDINARY ABILITY

Underlying Policy:

Option for permanent residence for top-ranked figures in field (Can be self-sponsored)
FILING PROCEDURE

- I-140 Immigrant Visa Petition to USCIS
- I-485 Adjustment of status application to USCIS
GOOD POINTS

- Foreign national can self-sponsor (Post-Docs and Researchers)
- No job offer needed
- No backlogs for India & China
- Direct filing to USCIS
- Option for Premium Processing
BAD POINTS

- Really tough standard to meet
- Inherent negative bias, particularly for India & China
CRITERIA FOR EXTRAORDINARY ABILITY (3/10)

- Prizes or awards
- Membership in prestigious associations
- Judge of work of others
- Original scientific/scholarly work
- Publication record
- Leading role in organization
- High salary
- Comparable evidence
SUB-THEMES

- Preeminence of employer
- Role of mentor
- Strength of support letters
COMPONENTS OF PETITION

• I-140 Petition
• Mentor’s support letter
• Outside support letters
• Evidence of alien’s credentials
• National importance of area of work
COMPONENTS OF PETITION

• Supporting documentation
  • Articles
  • Citations
  • Presentations
  • Awards
  • Review work of others
  • Miscellaneous material
OPTION #5
NATIONAL INTEREST WAIVER
Underlying Policy: Permanent residence for foreign national whose work/endeavors substantially benefit the United States

(Can be self-sponsored)
THREE (3) PRONGS

1. National in scope
2. Intrinsically meritorious
3. Ability to impact field as a whole (outstanding abilities)
GOOD POINTS

• Can self-petition (Post-Docs)

• Direct filing (no recruitment)
BAD POINTS

• Second Preference (India & China backlogs)
• No Premium Processing
• Subjective determination
• Growing restrictiveness
COMPONENTS OF PETITION

• I-140 Petition
• Mentor’s support letter
• Outside support letters
• Evidence of alien’s credentials
COMPONENTS OF PETITION

• Supporting documentation
  • Articles
  • Citations
  • Presentations
  • Awards
  • Review work of others
  • Miscellaneous material
GETTING THE GREEN CARD

• Adjustment of Status

• Consular Processing
IMPACT OF COMPREHENSIVE IMMIGRATION REFORM
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