SELF-PETITIONED OPTIONS FOR PERMANENT RESIDENCE

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OR...

GOING IT KIND OF ALONE TOWARD PERMANENT RESIDENCE
The Three (3) Basic Challenges:

1. Meeting legal criteria
2. Dealing with quota backlogs
3. Dealing with USCIS discretion
BASIC STRATEGY OPTIONS FOR PERMANENT RESIDENCE

• Family-Based
• Employment-Based
• Fear of Persecution
• Miscellaneous
EMPLOYMENT-BASED PATHWAYS

• Employer-Sponsored
  • Labor Certification Application
  • Outstanding Professor & Researcher (EB-1/2)
EMPLOYMENT-BASED PATHWAYS CONT.

- Self-Sponsored
  - Alien of Extraordinary Abilities (EB-1)
  - National Interest Waiver (Non-Clinician) (EB-2)
- National Interest Waiver (Clinical Physician) (EB-2)
PERMANENT RESIDENT OPTIONS OTHER THAN UNDER EMPLOYER SPONSORSHIP

• Main Focus:
  • Alien of Extraordinary Ability (EB-1/1)
  • National Interest Waiver/NYSDOT (Researcher) (EB-2)
BASIC REALITIES

- Subjective, Non-Linear Adjudication
- Skeptical, Adversarial Attitude
- Tough situation, particularly if from India or China
PARADIGM SITUATION: POST-DOC

- No Employer Sponsor
- Highly Qualified
- Major National Benefit from Research
- Problem: Junior in Career
IMMIGRATION JURISPRUDENCE: BASIC CONCEPTS

• Figure Out Underlying Policy Objectives
• Law Intended to Promote Certain Behaviors or Outcomes
• Burden on Applicant to Establish Entitlement
• Get Into Zone of Examiner
ISSUE #1:
WHO IS THE USCIS EXAMINER?
ISSUE #2: QUOTAS
VISA BULLETIN AND PRIORITY DATE

- **Visa Bulletin**
  - Annual immigrant visa quota: 226,000 family-sponsored; 140,000 employment-sponsored
  - Per-country visa limit of 7% or 25,620 (total family and employment limits)

- **Priority Date**
  - Date petition/application is submitted
# VISA BULLETIN – APRIL 2013

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<th>EMPLOYMENT PREFERENCES</th>
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VISA BULLETIN:
Free Online Subscription

http://travel.state.gov/visa/bulletin/bulletin_1360.html
ISSUE #3: ATTAINING PERMANENT RESIDENCE
TWO RELATED ELEMENTS OF ANY CASE

• Qualifying For Permanent Residence
  • Filing of Petition
  • Justifying Basis for Permanent Residence
  • Fitting into Certain Pre-Ordained Categories

• Actual Application for Permanent Residence
TWO MAIN SELF-PETITIONED OPTIONS:

• EB-1 Alien of Extraordinary Ability
• EB-2 National Interest Waiver: NYSDOT Variant
ALIEN OF EXTRAORDINARY ABILITY

• Sources of Law:
  • INA § 203(b)(1)(A)
  • 8 CFR 204.5(h)
DEFINITION:

• Aliens with Extraordinary Ability – An alien is described in this subparagraph if –
  • the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
DEFINITION CONT.:

• the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

• the alien’s entry into the United States will substantially benefit prospectively the United States.
KEY CONCEPTS:

• Sustained National or International Acclaim
• Small Percentage who have Risen to Top of Profession
• Alien Intends to Work in Area of Extraordinary Ability
• Prospective Benefit to United States
STIPULATED CRITERIA: NEED TO MEET 3/10

1) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

2) 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 fields;
3) 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. Such evidence shall include the title, date, and author of the material, and any necessary translation;

4) Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
5) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

6) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;

7) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;
8) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

9) Evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field; or
10) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

- 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.
CURRENT ENVIRONMENT

• Highly Subjective
• Steadily Rising Standard
• Flood of Applications from Indian and Chinese Applicants
• Higher Standard than O-1
• Not a Check-List Situation
  • Probably Requires More Than Three Categories
  • Don’t Stop at Baseline Criteria
CONSTITUENT ELEMENTS OF EB-1 FILING

• I-140 Immigrant Visa Petition (Self-Signed)
• Main Letter of Support (Recommended: External Signature)
• Outside Letters of Support
• Alien’s C.V.
CONSTITUENT ELEMENTS OF EB-1 FILING

- Indicia of Extraordinary Ability
  - Citations to Work
  - Publications
  - Awards & Commendations
  - Reports on Work
- National Importance of Work
PRACTICE POINTERS

- Define Carefully (and Limit) the Professional Field
- Requirement of Strong, Complete Central Support Letter
- Stress National Benefits/Importance
- Revise & Review C.V.
- Be Creative
KEY ELEMENT #1: CENTRAL SUPPORT LETTER

- Signed by Mentor
- Draft with Law/End in Mind
- Serve as Attorney’s Alter Ego
- Pop Scientific Tone: Immigration Examiner has Bachelor’s Degree or GED/Non-Scientific
KEY ELEMENT #2: OUTSIDE SUPPORT LETTERS

- Geographically Decentralized & Varied
- Largely U.S. Based
- General Benchmark: 10 Letters
- Involvement of Mentor
- Omit C.V.s of Referees
- Professional Societies & Associations
KEY ELEMENT #3:
CAREFUL PREPARATION OF C.V.

1. Be as inclusive as possible
2. Pay attention to professional titles
3. Contextualize information
4. Pay attention to publications & reviews
KEY ELEMENT #4: SOCIAL/NATIONAL IMPACT

1. Show realistic possibilities of success
2. Show benefit to national interests
KEY ELEMENT #5: PREEMINENCE OF EMPLOYER

While this is a self-sponsored filing, stress preeminence of institution, laboratory, department, mentor & colleagues

Concept of “guilt by association”
KEY ELEMENT #6: JUDGING WORK OF OTHERS

Take expansive approach with particular evidence on review articles
KEY ELEMENT #7: PUBLICATIONS

1. Take expansive view
2. Understand that USCIS relies heavily on metrics/publication numbers
KEY ELEMENT #8: YOU HAVE THE BURDEN TO PROVE

Above all: Remember that you have the burden to prove your entitlement. USCIS does not have the burden to disprove your entitlement.

Therefore, contextualize your information.
EB-2: NATIONAL INTEREST WAIVER / WAIVER OF JOB OFFER: VARIANT #1 – RESEARCHER

• Sources of Law:
  • INA § 203 (b)(2)(B)(I)
  • 8 CFR 204.5(k)(4)(ii) – Short Statement
SPECIAL RELEVANCE TO POST-DOCS
MAIN SOURCE OF LAW:

- Matter of New York State Department of Transportation (NYSDOT)
THREE PRONG TEST

• National in Scope
• Intrinsically Meritorious
• Outweigh Need for Labor Certification
SOCIAL FACTORS: WHAT IS IMPORTANCE OF RESEARCH

• Biomedical:
  • Morbidity/Mortality Rates
  • National Expenditures
  • Priority of Disease (NIH Guide)
  • Potential Cost Savings

• Business:
  • Cost Savings
  • Job Creation
  • International Competitiveness

• Other:
  • Look at Whole Scope of Work in Light of National Priorities
PRONG #3: OUTWEIGH NEED FOR LABOR CERTIFICATION

- Outstanding Ability so as to make National Impact.
- Elements that make L/C Unsuitable (i.e., Combination of Duties)
- Need for superlative researchers (not just minimally qualified)
OUTSTANDING ABILITY: MAKE OR BREAK ELEMENT
ABILITY TO IMPACT PROFESSION

- Not a Minor Functionary
- Meaningful Impact on Profession
- In Manner that Will Benefit U.S.
HOW TO PROVE OUTSTANDING ABILITIES

• Long, Persuasive Letter from Mentor
• Outside Support Letters
• Indicia of Outstanding Abilities
ROLE OF EMPLOYER: GUILT BY ASSOCIATION

• Employer is not Petitioner
• But: If Preeminent, will Reflect Well
• Track Record of Achievement
• Preeminence of Mentor
EVIDENCE OF OUTSTANDING ABILITY

- Original Contributions
- Publications
- Citations to Publications
- Published Material About Person
- Judge of Work of Others
- Grant Awards
CONSTITUENT ELEMENTS OF NYSDOT FILING

- I-140 Immigrant Visa Petition (Self-Signed)
- Main Letter of Support (Recommended: External Signature)
- Labor Cert ETA 7-50 Part B or ETA 9089
- Outside Letters of Support
- Alien’s C.V.
PRACTICE POINTER #1
IMPORTANCE OF WORK

• Show that area of work is of major interest
• Background social & biomedical research
• Need to show importance/relevance of area of work
PRACTICE POINTER #2
ROLE OF MENTOR

• Sign-off on central support letter

• Arranging outside support letters
PRACTICE POINTER #3
SCOPE/NATURE OF OUTSIDE SUPPORT LETTERS

• 10 letters
• Geographically decentralized/outside UCSF
• Societies and Associations
• Objective - assessment of work
PRACTICE POINTER #4
YOUR OWN IMPACT/IMPORTANCE TO FIELD

• Not minor functionary in laboratory
• Rather, can impact field as a whole
• Define field carefully
• Show uniqueness of work
• Conversely, show harm from departure
PRACTICE POINTER #5
PREEMINENCE OF EMPLOYER

• “Guilt by association” – if employer is preeminent, reflects well on you
• Employer’s/laboratory’s impact on field
• Nature of collaborators
• Breakthroughs achieved
POSSIBLE IMPACT OF COMPREHENSIVE IMMIGRATION REFORM
CONCLUSION

• Teamwork
• Advance planning
• Realistic assessments
• Good sense of humor
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