OVERVIEW PROGRAM ON PERMANENT RESIDENCE

University of California San Francisco

By

Robert D. Aronson
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

We create success and build relationships.
RULE #1: STAY OUT OF JAIL

“World-class expertise and service!”
RECRUITMENT DOs & DON’Ts: ANTI-DISCRIMINATION

• BASIC RULE: Must ask same questions to all applicants to avoid discrimination charges.
WHAT QUESTIONS CAN BE ASKED DURING RECRUITMENT PROCESS?

• Allowable Initial Questions:
  • Are you legally authorized to work in the United States?
  • Do you now or in the future require sponsorship for employment visa status?

“I’ve already started singing the praises of Aronson & Associates.”
• Allowable Follow-Up Questions:
  • What is your current status?
  • What visa sponsorship is needed?
  • How much time is left on your current status?

“I was very happy & satisfied with the service.”
RULE #2: The United States as a Sovereign Nation has the right to control and restrict the presence of foreign nationals in this country.

“I commend the excellent effort, teamwork and courtesy extended to me by your firm.”
RULE #3: 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

“Your efficient handling of our company’s immigration issues takes a major item off my to-do list.”
DEFINITION OF TERMS: PERMANENT RESIDENCE

- Unlimited time duration
- Unlimited employment authorization
- Reentry permission following trips abroad

“We appreciate your help over the past 12 years.”
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

“We are very pleased with the speed and efficiency with which our case was successfully completed.”
RULE #5: 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)

“I never have to worry about our immigration cases – I know your team will get things done right in a timely manner.”
RULE #6: WHOLE OBJECTIVE OF IMMIGRATION IS TO FIT A CASE INTO PRESCRIBED IMMIGRATION CLASSIFICATIONS

“We think of you as our partners. You work with us to brainstorm ideas and consider the options that are best for our organization.”
THREE (3) PARAMETERS OF IMMIGRATION

- **Substance**: Meeting & Understanding Legal Standards
- **Timeline**: Quotas, Country, & Preference
- **Adjudicator**: Attitude of the USCIS Examiner
BASIC APPROACH TO IMMIGRATION CASE

- What is the law trying to say?
- What behaviors will the law recognize & reward?
- Burden on applicant to prove entitlement
- Synthesize immigration, personal & professional needs
- Get into zone of USCIS examiner
ARCHITECTURE OF CASE

• Immigrant Visa Petition (I-40 or I-130)
  – Establishing Right to Permanent Residence

• Acquiring U.S. Permanent Residence
  – Adjustment of Status (I-485)
  – Consular Processing for an Immigrant Visa
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 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 – JULY 2011

<table>
<thead>
<tr>
<th>Employment- Based</th>
<th>All Charge-ability Areas Except Those Listed</th>
<th>CHINA- mainland born</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>2nd</td>
<td>C</td>
<td>08MAR07</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>3rd</td>
<td>08OCT05</td>
<td>01JUL04</td>
<td>01MAY02</td>
<td>01JUL05</td>
<td>08OCT05</td>
</tr>
<tr>
<td>Other Workers</td>
<td>22NOV04</td>
<td>22APR03</td>
<td>01MAY02</td>
<td>22NOV04</td>
<td>22NOV04</td>
</tr>
<tr>
<td>4th</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Certain Religious Workers</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>5th</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
</tbody>
</table>

**U.S. Permanent Residence: Basic Concepts**
WHO IS THE IMMIGRATION EXAMINER?
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
SUBSTANCE: EMPLOYMENT-BASED IMMIGRATION

• Employer Sponsored
• Self-Sponsored

“You have the best team of immigration lawyers.”
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

“You have the best team of immigration lawyers.”
SELF-SPONSORED

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

• National Interest Waiver (EB2)
  – Benefits to the United States

"You have the best team of immigration lawyers."
FIVE TIERS OF EMPLOYMENT-BASED IMMIGRATION

• First Preference:
  – Aliens of Extraordinary Ability (self-petition)
  – Outstanding Professors & Researchers (requires UCSF sponsorship)
FIVE TIERS OF EMPLOYMENT-BASED IMMIGRATION

• Second Preference: Advanced Degree Aliens
  • Labor Certification Applications (UCSF-sponsored)
  • Special Handling (University teachers)
  • National Interest Waiver (self-petition)
FIVE TIERS OF EMPLOYMENT-BASED IMMIGRATION

• Third Preference: Professionals/Skilled Workers
  • Labor Certification Applications
• Fourth Preference: Special Immigrants
  • Religious Workers
  • Certain Government Workers
• Investors
OPTIONS FOR PERMANENT RESIDENCE USED AT UCSF

We create success and build relationships.
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 Specified Manner to show that employment of a foreign national at UCSF will not harm U.S. labor market

- Foreign national needs to be “best qualified” applicant (teacher) or only fully qualified applicant (all others)
- Payment of prevailing wage
I’ve already started singing the praises of Aronson & Associates.

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 (8-12 months)
• Second Preference: backlogs for India & China

“I’ve already started singing the praises of Aronson & Associates.”
“I was very happy & satisfied with the service.”
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

“I commend the excellent effort, teamwork and courtesy extended to me by your firm.”
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

“When we think of immigration, we think of Aronson & Associates.”
OPTION #3: OUTSTANDING PROFESSOR & RESEARCHER (EB1-2)

Underlying Policy: confer permanent residence upon outstanding academic figures

“Your efficient handling of our company’s immigration issues takes a major item off my to-do list.”
FILING PROCEDURE:

- UCSF’s Immigrant Visa Petition
- Adjustment of Status Application

“We appreciate your help over the past 12 years.”
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

“We are very pleased with the speed and efficiency with which our case was successfully completed.”
I never have to worry about our immigration cases – I know your team will get things done right in a timely manner.

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

“We think of you as our partners. You work with us to brainstorm ideas and consider the options that are best for our organization.”
BAD POINTS:

- Needs UCSF sponsorship
- Subjective judgment
- Requires permanent offer of employment for researcher or tenure/tenure-track for faculty

“I will definitely recommend your firm.”
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
COMPONENTS OF PETITION cont.

- Supporting documentation
  - Articles
  - Citations
  - Presentations
  - Awards
  - Review work of others
  - Miscellaneous material

“I’ve already started singing the praises of Aronson & Associates.”
OPTION #5: NATIONAL INTEREST WAIVER

Underlying Policy: Permanent residence for foreign national whose work/endeavors substantially benefit the United States

(Can be self-sponsored)

“I was very happy & satisfied with the service.”
FILING PROCEDURE:

• I-140 Immigrant Visa Petition to USCIS
• I-485 to USCIS (if no backlog in quota)
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)

“Your efficient handling of our company’s immigration issues takes a major item off my to-do list.”
BAD POINTS:

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

“We appreciate your help over the past 12 years.”
COMPONENTS OF PETITION

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

“We are very pleased with the speed and efficiency with which our case was successfully completed.”
COMPONENTS OF PETITION cont.

- Supporting documentation
  - Articles
  - Citations
  - Presentations
  - Awards
  - Review work of others
  - Miscellaneous material

“I never have to worry about our immigration cases – I know your team will get things done right in a timely manner.”
CONCLUSION:

• Teamwork
• Advance Planning
• Realistic Assessments
• Good Sense of Humor

“I will definitely recommend your firm.”
Aronson & Associates, P.A.
1221 Nicollet Mall
Suite 506
Minneapolis, MN  55403

Tel: 612-339-0517
Fax: 612-349-6059

Email: Info@aronsonimmigration.com
Web: www.aronsonimmigration.com

“World-class expertise and service!”