OR: GOING IT KIND OF ALONE TOWARD PERMANENT RESIDENCE
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

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WHO IS THE IMMIGRATION EXAMINER?

Providing Solutions You Need
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
FIVE TIERS OF EMPLOYMENT-BASED IMMIGRATION

1. FIRST PREFERENCE:
   - Aliens of Extraordinary Ability (self-petition)
   - Outstanding Professors & Researchers (requires UCSF sponsorship)

“I’ve already started singing the praises of Aronson & Associates.”
2. SECOND PREFERENCE: Advance Degree Aliens

- Labor Certification Applications (UCSF-sponsored)
- Special Handling (University Teachers)
- National Interest Waiver (self-petition)

“I was very happy & satisfied with the service.”
3. THIRD PREFERENCE: Professionals/Skilled Workers
   • Labor Certification Applications
4. FOURTH PREFERENCE: Special Immigrants
   • Religious Workers
   • Certain Government Workers
5. INVESTORS

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

Labor Certification Application/Employer-Sponsored case is a conservative and generally a highly reliable method to achieve permanent residence

“When we think of immigration, we think of Aronson & Associates.”
YOUR EFFICIENT HANDLING OF OUR COMPANY’S IMMIGRATION ISSUES TAKES A MAJOR ITEM OFF MY TO-DO LIST.”
GENERAL OBSERVATION:

Self-sponsored filings, by definition, involve discretion by the immigration examiner.

“We appreciate your help over the past 12 years.”
WHY SELF SPONSOR?

• Employer may not want to sponsor Labor Certification Application

• Employer now needs to pay Labor Certification
  • Costs
  • Attorney’s Fees

“We are very pleased with the speed and efficiency with which our case was successfully completed.”
• Avoidance of quota-based backlogs (EB-1 for India & China)
• Expedited employment options for spouses & children
• Expediting case preparation
• Presence of qualified U.S. applicants and/or non-prevailing wage
• Age-out children

“I never have to worry about our immigration cases – I know your team will get things done right in a timely manner.”
WHY TO AVOID SELF-SPONSOR:

- Aggressive, subjective approach
- Higher denial rate
- Profile and position of alien
- Higher, more restrictive standards for EB-1 (Flood of petitions from India & China)
- Labor Certification option is tried-and-true
- Liberalizations in H-1B extensions beyond six years

“Your company is very efficient.”
CONCURRENT L/C & SELF-PETITIONED FILINGS

• Is possible to concurrently file under different theories
• Main relevance:
  • Self-Petitioned (employment authorization to dependents)
  • Labor Certification Application
EB-1: 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 –

i. 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,
ii. the alien seeks to enter the United States to **continue** work in the area of extraordinary ability, **and**

iii. 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
• Extensive documentation
• Alien intends to work in area of extraordinary ability
• Prospective benefit to United States

“I’ve already started singing the praises of Aronson & Associates.”
HAS RISEN TO THE TOP OF THE PROFESSION THROUGH SUSTAINED ACHIEVEMENT:

• But what is your profession?
  • Pathology?
  • Pneumonia studies?
  • Pneumonia vaccine development?
  • Ear infection pneumonia vaccine development?

“I was very happy & satisfied with the service.”
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;

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

“When we think of immigration, we think of Aronson & Associates.”
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;

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

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

“I will definitely recommend your firm.”
MORE CONSTITUENT ELEMENTS

• Indicia of extraordinary ability
  • Citations to work
  • Publications
  • Awards & commendations
  • Reports on work
• National importance of work

“Your company is very efficient.”
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!
HOW DOES USCIS PROCESS AN EB1 CASE?

Kazarian v. Holder:
Two –Part Analysis

• Has applicant met 3/10 criteria?
• If so, in totality of evidence, is applicant extraordinary?

“You have the best team of immigration lawyers.”
CENTRAL SUPPORT LETTER

• Signed by mentor
• Draft with law/end in mind
• Serve as attorney’s alter ego
• Pop scientific tone: reviewer has Bachelor’s Degree or GED/non-scientific
OUTSIDE SUPPORT LETTERS

- Geographically decentralized and varied
- Largely U.S. based
- General benchmark: 10 letters
- Involvement of mentor
- Omit C.V.s of referees
- Profile of outside letter-writers
NATIONAL INTEREST WAIVER/WAIVER OF JOB OFFER

• Sources of Law:
  • INA § 203(b)(2)(B)(I)
  • 8 CFR 204.5(k)(4)(ii) – short statement
MAIN SOURCE OF LAW:

Matter of New York State Department of Transportation (NYSDOT)

“You have the best team of immigration lawyers.”
FILING PROCEDURE:

• I-140 Immigrant Visa Petition to USCIS
• I-485 Adjustment of Status Application
  • EB-2
  • Needs Immigrant Visa Number
• No Premium Processing

“I’ve already started singing the praises of Aronson & Associates.”
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.

“I was very happy & satisfied with the service.”
THREE PRONG TEST:

1. National in scope
2. Intrinsically meritorious
3. Outweigh need for Labor Certification

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

“When we think of immigration, we think of Aronson & Associates.”
OUTSTANDING ABILITY: MAKE OR BREAK ELEMENT

“Your efficient handling of our company’s immigration issues takes a major item off my to-do list.”
HOW TO PROVE A FOREIGN NATIONAL IS OUTSTANDING

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

“We appreciate your help over the past 12 years.”
We are very pleased with the speed and efficiency with which our case was successfully completed.

SUB-THEMES

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

“I never have to worry about our immigration cases – I know your team will get things done right in a timely manner.”
“We think of you as our partners. You work with us to brainstorm ideas and consider the options that are best for our organization.”

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

“I will definitely recommend your firm.”
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

“Your company is very efficient.”
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
CONCLUSION:

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