



Employment- Based Immigration

Preference allocation
for employment-
based residence

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Employment- Based 1st Preference

Priority Workers

US law establishes limitations on the number of persons who may immigrate to the US each year. It also limits the percentage of total immigrants from any one particular country—"per-country limitations". To set those limits, the immigration categories are listed in order—"preference". The US publishes the backlog, if any, in the monthly *Visa Bulletin*.

1st Preference

1. Aliens with extraordinary ability

01

**Aliens with
Extraordinary Ability**

02

**Outstanding
Professors and
Researchers**

03

**Certain
Multinational
Executives or
Managers**

- Immigrants with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by national or international acclaim and whose achievements have been recognized in the field through extensive documentation.
- The applicant must demonstrate that (s)he will enter the US to continue to work in the area of extraordinary ability and that such work will substantially benefit prospectively the US.
- **Extraordinary ability** means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.
- To demonstrate the sustained national or international acclaim and that the person's achievements have been recognized in the field of expertise, the following must be submitted:
 - A one-time achievement that is, a major, international recognized award, or at least three of the following:
 - receipt of a lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - 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;
 - published material about the person in professional or trade publications or other major media, relating to the his or her work in the field;
 - participation, individually or on a panel, as a judge of the work or others;
 - original scientific, scholarly, artistic, athletic, or business-related contributions of major significance;
 - authorship of scholarly articles, in professional or major trade publications or other major media;
 - display of the work in the field at artistic exhibitions or showcases;
 - performance in a leading or critical role for organizations or establishments that have a distinguished reputation;
 - commanded a high salary or other significantly high remuneration for services in relation to others;
 - commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales;
 - if these standards do not readily apply to the occupation, comparable evidence to establish eligibility.

1st Preference

2. Outstanding professors and researchers

A person who is recognized internationally as outstanding in a specific academic area, and has at least 3 years of experience in teaching or research and seeks to enter the US:

- for a tenured position or a tenured-track position within a university or institution of higher education to teach in the academic area,
- for a comparable position with a university or institution of higher education to conduct research in the area, or
- for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic area.

Outstanding professors and researchers must show:

- International recognition as outstanding in the academic field by providing at least 2 of the following:
 - i. Receipt of major prizes or awards for outstanding achievement in the academic field,
 - ii. Membership in associations in the academic field which require outstanding achievements of its members,
 - iii. Published material in professional publications written by others about the person's work in the academic field,
 - iv. Participation, individually or on a panel, as the judge of the work of others in the same or allied academic field,
 - v. Original scientific or scholarly research contributions to the academic field,
 - vi. Authorship or scholarly books or articles, in scholarly journals with international circulation, in the academic field, or
 - vii. Other comparable evidence to establish eligibility,

1st Preference

3. Multinational executives or managers

- A person who in the last three years preceding the time of the person's application for classification and admission in the US, has been:
 - Employed for at least one year by a firm or corporation or other legal entity or an affiliate or subsidiary, and
 - Seeks to enter the US to continue to render services to the same employer or to a subsidiary or affiliate in a capacity that is managerial or executive.

Multinational executives or managers must demonstrate:

- That, if the person is outside the US, (s)he has been employed for at least one year within the immediately preceding three years, in a managerial or executive capacity by a firm or corporation, other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity, or
- If the person is already in the US working for the same employer or subsidiary of the firm or corporation, other legal entity by which the person was employed overseas, in the 3 years preceding entry as a nonimmigrant, the person was employed by the entity abroad for at least one year in a managerial or executive capacity,
- The US employer is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas,
- The US employer has been doing business for at least one year, and
- An offer of employment by the US entity for employment in a managerial or executive capacity.

Employment- Based 2st Preference

Available to members of the professions having an advanced degree; exceptional ability in the sciences , arts, or business, for employment where no US workers are available or where the work will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the US.

Members of the professions holding advanced degrees or having exceptional ability

01

Labor Certification Requirement

Labor Certification

Unlike the 1st Preference category, this category normally requires the filing of a labor certification.

02

Waiver of Job Offer

Waiver of Job Offer and Labor Certification

In certain cases, the job offer and the labor certification requirements may be waived, allowing the individual to apply directly with USCIS. This results in a much faster process and allows the immigrant the ability to self-sponsor. The immigrant will need to demonstrate that (s)he is coming to the US to continue to work in the field, however.

03

Requirements to Reach the 2nd Preference

- **Physicians working in shortage areas or veteran facilities**

USCIS will waive the labor certification requirement for a physician who:

- Agrees to work full-time as a physician in an area having a shortage of health care facility under the jurisdiction of the Secretary of Veterans Affairs, and
- A federal agency or a department of public health in any State has previously determined that the immigrant physician's work in such an area or at such facility was in the public interest.
- Physicians, who have not worked for the aggregate of 5 years (not including work under a J-1) in an area or areas designated as having a shortage of health care professionals or at a health care facility under Veterans Affairs, may not adjust status or receive an immigrant visa.

- **National Interest Waiver**

USCIS may exempt the requirements of a job offer and the labor certification for immigrants of exceptional ability in the sciences, arts, or business or having an advanced degree if exemption would be in the national interest.

- Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
- Advanced degree means any US academic or professional degree or foreign equivalent degree above that of a baccalaureate. A baccalaureate or foreign equivalent degree followed by at least 5 years of progressive experience in the specialty shall be equivalent to a master's degree. If the specialty customarily requires a doctorate, then the immigrant must have a US or foreign equivalent doctorate degree.

Requirements for Cases not Meeting the National Interest Waiver Requirements

A US employer may petition for a foreign national either who has an advanced degree or exceptional abilities in the sciences, arts, or business, first by filing a labor certification. Please refer to our literature on labor certifications for more information.

Initial Evidence

- To demonstrate that the immigrant is a professional holding an advanced degree:
 - Official academic record showing an advanced US degree or foreign equivalent; or
 - Official academic record showing a US baccalaureate degree or foreign equivalent, and evidence in the form of letters from current or former employer(s) showing that the immigrant has at least 5 years of progressive post-baccalaureate experience in the specialty.

- To demonstrate that the immigrant is a person of exceptional ability in the sciences, arts, or business:
 - Official academic record showing that the immigrant has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
 - Evidence in the form of letters from current or former employers showing that the immigrant has at least 10 years of full time experience in the occupation for which (s)he is being petitioned.
 - A license to practice the professional or certification for a particular profession or occupation;
 - Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrate exceptional ability;
 - Evidence of membership in professional associations; or
 - Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
 - If the above standards do not readily apply to the immigrant's occupation, the petitioning employer may submit comparable evidence to establish the immigrant's eligibility.

Employment- Based 3rd Preference

Skilled workers, professional, and other workers.

01

Labor Certification Requirement

02

Qualification Requirements

Labor Certification

To obtain an immigrant visa under the 3rd preference category listed below, the immigrant must have a US job offer. The job offer must be for a full-time, permanent position. The employer must file and obtain certification of a “Labor Certification” from the US Department of Labor prior to filing any petitions with USCIS.

Qualifications

This category is available to:

- Qualified immigrants who are immediately capable of performing skilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the US.
 - “Skilled labor” is labor requiring at least 2 years of training or experience.
 - To demonstrate that US workers are not available in the US the employer must first obtain certification of a labor certification application.
- Professionals who hold a baccalaureate degree and who are members of the professions, and
- Other Workers who are qualified and capable, at the time of petitioning for this classification, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the US.
 - While this classification falls under the 3rd preference, Other Workers are provided less spots per year than skilled laborers and professionals. This may result in slightly longer processing times.

Employment- Based 4st Preference

A category reserved for “special Immigrants”.

01

Meaning of “Special Immigrant” under immigration law.

02

Definitions

Who is a Special Immigrant

- Religious workers;
- Special Immigrant Juveniles;
- Certain broadcasters;
- Certain retired officers or employees of a G-4 international organization or NATO-6 civilian employees and their family members;
- Certain employees of the U.S. government who are abroad and their family members;
- Members of the U.S. armed forces;
- Panama Canal company or Canal Zone government employees;
- Certain physicians licensed and practicing medicine in a U.S. state as of Jan. 9, 1978;
- Afghan or Iraqi translators or interpreters;
- Iraqis who were employed by or on behalf of the U.S. government; and
- Afghans who were employed by the U.S. government or International Security Assistance Force (ISAF).

Definitions

- **Religious Workers**
 - Ministers and non-ministers in religious vocations and occupations may immigrate to or adjust status in the U.S. if coming to perform religious work in a full-time compensated position.

- **Special Immigrant Juveniles** as defined below may adjust status if they meet the following conditions:
 - Be under 21 years of age.
 - Only at the time you file the SIJ petition (Form I-360).
 - Be currently living in the United States. You cannot apply from outside the country to come to the United States on SIJ classification
 - Both at the time you file the SIJ petition and at the time USCIS makes a decision on your petition.
 - Be unmarried. This means you either:
 - Have never been married; or
 - Were previously married, but the marriage ended in annulment, divorce, or death.
 - Both at the time you file the SIJ petition and at the time USCIS makes a decision on your petition.
 - Have a valid juvenile court order issued by a state court in the United States which finds that:
 - You are dependent on the court, or in the custody of a state agency or department or an individual or entity appointed by the court;
 - You cannot be reunified with one or both of your parents because of ANY of the following:
 - Abuse,
 - Abandonment,
 - Neglect or
 - A similar basis under state law; AND
 - It is not in your best interests to return to the country of nationality or last habitual residence of you or your parents.
 - Both at the time you file the SIJ petition and at the time USCIS makes a decision on your petition.
 - EXCEPTIONS: You do not need to currently be under the jurisdiction of the juvenile court that issued your order if the court's jurisdiction ended solely because:
 - You were adopted or placed in a permanent guardianship; or
 - You aged out of the juvenile court's jurisdiction.
 - Be eligible for USCIS consent. This means that you must have sought the juvenile court order to obtain relief from abuse, neglect, abandonment or a similar basis under state law and not primarily to obtain an immigration benefit.
 - At the time USCIS makes a decision on your petition.
 - Have written consent from the Department of Health and Human Services (HHS)/ Office of Refugee Resettlement (ORR) to the court's jurisdiction if:
 - You are currently in the custody of HHS, AND
 - The juvenile court order also changes your custody status or placement.
 - At the time USCIS makes a decision on your petition.

Employment- Based 5th Preference

Residence based on investment resulting in
employment creation

01 EB-5 Program

EB-5 Program

02 New Commercial Enterprise

Under this program, investors (and their spouses and unmarried children under 21) are eligible to apply for a Green Card (permanent residence) if they:

03 Employment Creation

- Make the necessary investment in a commercial enterprise in the United States; and
- Plan to create or preserve 10 permanent full-time jobs for qualified U.S. workers.

04 Capital Investment Requirements

New Commercial Enterprise

05 Capital Amounts

All EB-5 investors must invest in a new commercial enterprise that was established:

06 Regional Centers

- After Nov. 29, 1990; or
- On or before Nov. 29, 1990, that was:
 - Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results; or
 - Expanded through the investment, resulting in at least a 40% increase in the net worth or number of employees.

A new commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business, including:

- A sole proprietorship;
- Partnership (whether limited or general);
- Holding company and its wholly owned subsidiaries (provided that each subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business);
- Joint venture;
- Corporation;
- Business trust;
- Limited liability company; or
- Other entity, which may be publicly or privately owned.

This definition does not include noncommercial activity, such as owning and operating a personal residence.

Employment Creation

An EB-5 investor must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least 10 qualifying employees.

- For a new commercial enterprise not located within a regional center, the new commercial enterprise must directly create the full-time positions to be counted. This means that the new commercial enterprise (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees.
 - Direct jobs establish an employer-employee relationship between the new commercial enterprise and the persons it employs.
 - Indirect jobs are held outside of the new commercial enterprise but are created because of the new commercial enterprise.
- In the case of a troubled business, the EB-5 investor may rely on job maintenance.
 - The investor must show that the number of existing employees is, or will be, no less than the pre-investment level for a period of at least two years.

Capital Investment Requirements

Capital means cash and all real, personal, or mixed tangible assets owned and controlled by the immigrant investor. All capital will be valued at fair-market value in U.S. dollars.

The definition of capital does not include:

- Assets acquired, directly or indirectly, by unlawful means (such as criminal activities);
- Capital invested in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the immigrant investor and the new commercial enterprise;
- Capital invested with a guaranteed rate of return on the amount invested; or
- Capital invested that is subject to any agreement between the immigrant investor and the new commercial enterprise that provides the immigrant investor with a contractual right to repayment, except that the new commercial enterprise may have a buy back option that may be exercised solely at the discretion of the new commercial enterprise.

Capital Amounts

Petition Filing Date	Minimum Investment Amount	Targeted Employment Area Investment Amount
Before 3/15/2022	\$1,000,000	\$500,000
On or After 3/15/2022	\$1,050,000	\$800,000 (includes infrastructure projects)

Future adjustments will be tied to inflation using the change in the Consumer Price Index for All Urban Consumers (CPI-U) from March 15, 2022, to the date of adjustment. These adjustments will occur every five years, with the first such adjustment effective for petitions filed on or after Jan. 1, 2027.

A targeted employment area can be, at the time of investment, either:

- A rural area; or
- An area that has experienced high unemployment (defined as at least 150% of the national average unemployment rate).

Regional Centers

An EB-5 regional center is an economic unit, public or private, in the United States that is involved with promoting economic growth. USCIS designates regional centers for participation in the Immigrant Investor Program.

This is, perhaps, the simplest method of acquiring lawful permanent residence as a result of an investment under the EB-5 program. Not all regional centers are reliable. Approval as a regional center by USCIS does not guarantee that the investment is a sound investment. Due diligence and the advice of counsel very important. However, investing through a reputable and approved regional center is the most sensible way to obtain residence status in the US for persons who have adequate economic means:

- The regional center will find investment projects.
- Reputable centers will compile extensive due diligence and remain your partner in directing the business operations.
- Your investment commitment time may vary, but most centers are able to either re-invest or buy out your \$800,000 capital investment within 6 years. In effect, you may receive your full investment within that time.
- A good investment opportunity, through a regional center should also yield a minimal return on investment, depending on success.
- The regional center will demonstrate the employment creation requirement on your behalf.
- For a new commercial enterprise located within a regional center, the new commercial enterprise can directly or indirectly create the full-time positions. Up to 90% of the job creation requirement for regional center investors may be met using indirect jobs.
- Although you will be involved in the direction of the investment, your time commitment is minimal.