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Legal Seminar for International Postdocs



News and Important Info

- Kazarian Decision
- Backlogs for India and China
- H-Visa availability
- Bi-Specialization
- I-140 timeline updates
- Premium Processing Update
- Current Bills in Congress

VISAS



- 📖 Two Types of Visas:
 - 📖 Non-Immigrant Visas
 - 📖 Immigrant Visas (Employment, Family)

Non-Immigrant Visas

- 📖 Visas are lettered (A, B, C....)
- 📖 Each visa has its own requirements, timelines, availability
- 📖 Your I-94 indicates how long you can stay in the US
- 📖 Status can be changed and/or extended by USCIS
- 📖 Visa stamp is for re-entry to the US after travel
- 📖 Visa stamp is not determinative of status

Immigrant Visas

- 📖 Two Main Categories:
 - 📖 Family Based
 - 📖 Spouse, Parent, Child, Sibling
 - 📖 Employment Based
 - 📖 Through Employer (OR, PERM)
 - 📖 Self-Sponsored (EA, NIW)

NON-IMMIGRANT VISAS



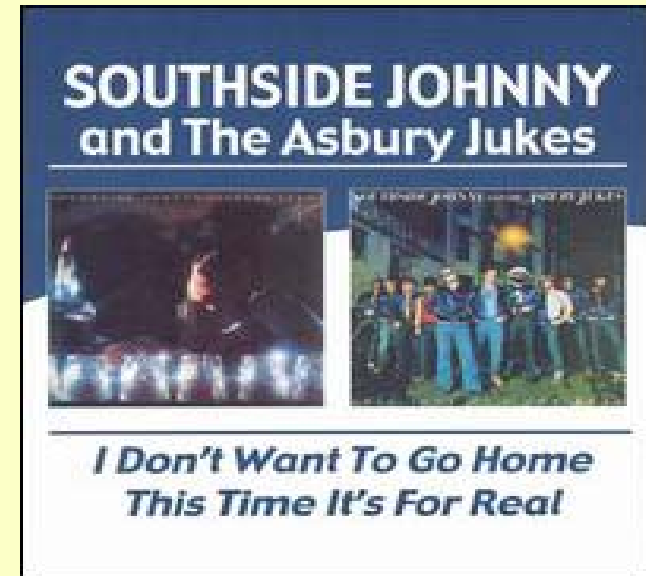
TEMPORARY

J-Visas



- 📖 Research J-1s 5 year max
- 📖 212(e) - 2 year home residency requirement
 - 📖 Subject if you receive money from U.S. government, your government, or international organization OR on Skills list OR Graduate Medical Education

212(e) Waivers



- Four types of Waivers:
 - No-Objection: statement from your home-country AND organization if receive US gov't funding or Int'l org. funding
 - IGA: Employer to sponsor you through an interested govt agency
 - Hardship to US Citizen Spouse or Child
 - - Must be extreme (economic hardship or family separation not enough)
 - Persecution: face persecution if sent back to home country

H-1b Visa

- ▢ Requirements: You must have a bachelors degree or higher and the position must require someone with a bachelors degree in a specific or related field (that matches your degree)
- ▢ Cap Exemptions: University, Gov't Research Organization, Related Non-Profit
 - ▢ Also - Working for private company BUT physically housed at exempt org.
 - ▢ Have H-1b at exempt organization and, while maintaining that H, receive new part time H at a for profit company
- ▢ H-1b is dual intent and can be maintained up until the day you get GC
- ▢ Otherwise need alternatives: O-Visa, TN VISA, E-Visa

H-Visa Availability



- ❏ Only 65,000 per year (plus 20,000 for Master's Cap).
- ❏ For this fiscal year (Oct. 1, 2010 through Sept. 30, 2011) all cap subject H-1Bs have been used
- ❏ Next year able to apply on April 1, 2011 for a New H-Visa to start on October 1, 2011
- ❏ The above applies to CAP SUBJECT H-VISAS ONLY

O-Visa

- ❏ Extraordinary ability in the sciences, arts, education, business or athletics" which "have been demonstrated by sustained national or international acclaim."
- ❏ The person entering the US must be coming to work in their field of ability, but the position need not require the services of a person of extraordinary ability.
- ❏ A scientist on the O-Visa is being sponsored by the employer. Unlike the H-Visa, there is no maximum amount of time a person can remain on an O-Visa, nor is there a cap issue.
- ❏ A Waiver is not required to obtain O-Visa status if the applicant has J-Visa with a two year home residence requirement
- ❏ The O Visa is Dual-Intent

TN Visa



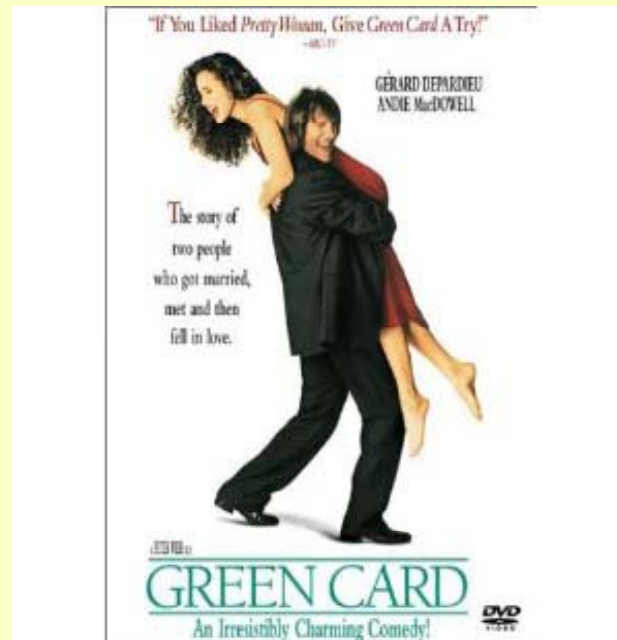
- 📖 TN Visa is available to Canadian and Mexican citizens for certain professional positions
- 📖 Initial TN can be requested for 3 years. Can be subsequently renewed for three years
- 📖 Not Dual intent

E-Visa



- 📖 Investor visa - requires substantial investment
- 📖 As a foreign citizen, you may be issued an E-2 nonimmigrant visa if all of the following requirements are met:
 - 📖 You are from a country which is eligible for an E-2 Visa and at least 50% of the company stock must be owned by you;
 - 📖 You will invest or have invested substantial capital which is at risk.

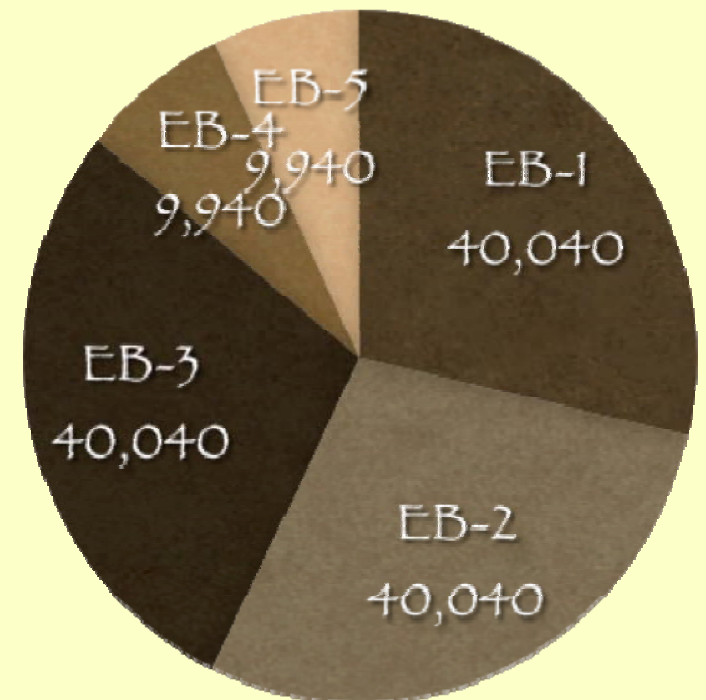
IMMIGRANT VISAS



Employment Based IV

140,000 total Immigrant Visas Divided into five categories:

- EB-1: Extraordinary Ability, Outstanding Researcher, Multi-National Executive (28.6% of total)
- EB-2: National Interest Waiver, Advanced Degree or Exceptional Ability PERM (28.6%)
- EB-3: Professional PERM (28.6%)
- EB-4: Special Immigrants (7.1%)
- EB-5: Employment Creation (7.1%)





Bi-Specialization



- 📖 I-140's: East coast and South - Texas,
West Coast and Mid-West - Nebraska
- 📖 H-1b and other Temp. Visas
East Coast and South - Vermont
West Coast and Mid-West - California
- 📖 All I-765 and I-131 renewals filed based upon address of applicant, not based upon where application was originally filed
- 📖 New lockboxes and other filing addresses. Be careful if filing individual applications



I-140 Timelines

- 📖 May only file I-140 in two places:
 - 📖 Texas Service Center ~ 7 months
 - 📖 Nebraska Service Center ~ 4 months
- 📖 Generally our experience is that these cases are taking slightly longer than this
 - 📖 If not adjudicated, after your case passes the timeline by 60 days can contact USCIS to check on case

Premium Processing

Still Available for I-129's (H-1B, O-1)

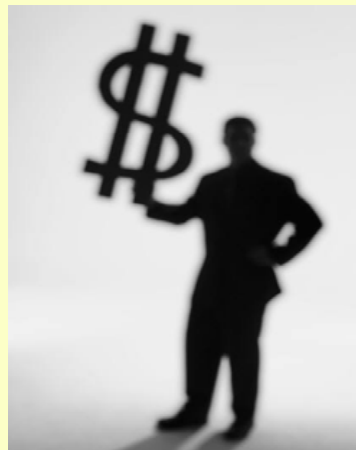
Now available for CERTAIN I-140's

EB-1 A, Extraordinary Ability

EB-1 B, Outstanding Professor/Researcher

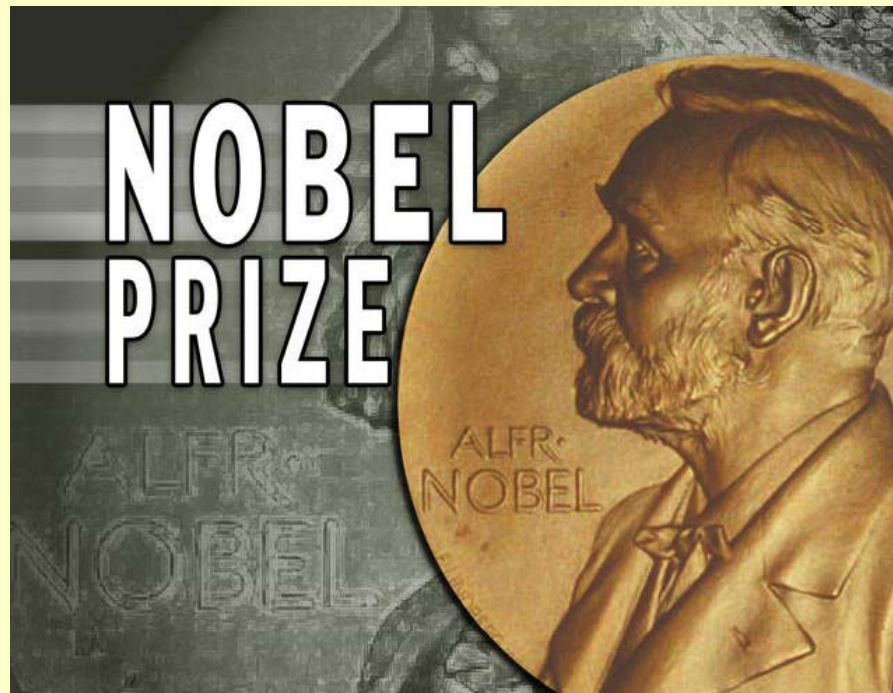
EB-2 (Not National Interest Waiver)

EB-3 (affected by Immigrant Visa backlogs)



Extraordinary Ability

- Evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. One-time achievement (that is, a major, international recognized award),



OR at least three of the following:

- 📖 AWARDS
- 📖 MEMBERSHIPS
- 📖 PUBLISHED MATERIAL
ABOUT THE ALIEN
- 📖 JUDGE OF THE WORK OF
OTHERS
- 📖 ORIGINAL SCIENTIFIC
CONTRIBUTION

Extraordinary Con't

- ▢ AUTHORSHIP OF SCHOLARLY ARTICLES
- ▢ DISPLAY OF THE WORK AT CONFERENCES & EXHIBITIONS
- ▢ WORK IN A LEADING OR CRITICAL ROLE AT AN ORGANIZATION OF DISTINGUISHED REPUTATION
- ▢ HIGH SALARY
- ▢ COMMERCIAL SUCCESS IN THE PERFORMING ARTS
- ▢ COMPARABLE EVIDENCE
- ▢ NO OFFER OF EMPLOYMENT IS NEEDED, however, the petition must be accompanied by evidence that the alien is coming to the United States to continue work in the area of expertise.

Part Two of the Test

The Kazarian Memo

Recognized as one of the few at the top of your field. Sustained national or international acclaim

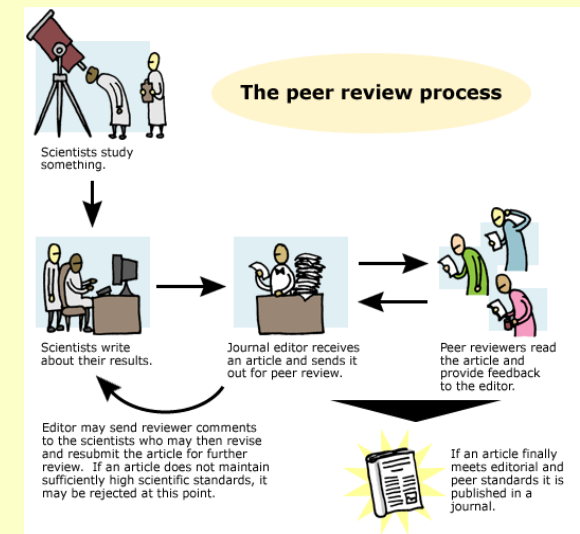


National Interest Waiver



- ❏ Preliminary Requirement - Must have an Advanced Degree or Exceptional Ability
 - ❏ Advanced Degree - Any degree above bachelor's degree (or a bachelor's degree plus 5 years experience).
 - ❏ Exceptional Ability - list of criteria show that you meet 3
- ❏ NIW Standards:
 - ❏ Show that your work has Substantial Intrinsic Merit
 - ❏ Show that the benefit of work is national in scope
 - ❏ Show that you would serve the National Interest to a substantially greater degree than a U.S. Citizen with minimum qualifications

Evidence



Employment Sponsored

- ▣ Outstanding Researcher (EB-1):

- ▣ No Advertising

- ▣ 6 criteria, show you meet 2, 3 years experience

- ▣ Employer must show at least 3 full time employees and

- ▣ Position is “Permanent” (includes tenure, tenure track, at-will, etc.)

- ▣ PERM

- ▣ Employer advertises the position to see if any qualified US Citizen or PR apply

- ▣ File with DOL. Upon certification, then file with USCIS

FINALIZING YOUR GREEN CARD

Where Can you file?

- 📖 In the United States: File I-485, Adjustment of Status



Overseas: Sent to NVC, then US Consulate in your Home Country



What Does Retrogression Mean?



- ❏ Date must be current at time of filing AND at time of approval
- ❏ Currently, if you are from India or China you CANNOT file an I-485 based upon your EB2.
- ❏ If you file an I-485 based upon the EB-1 and the EB-1 is denied, the I-485 will be denied even if the EB-2 is still pending.

Retrogression-Backlogs

- EB-1 (Extraordinary Ability, Outstanding Professor or Researcher):
Visa numbers are current for everyone and are expected to remain so for both countries.
- EB-2 (National Interest Waiver, PERM):
 - China backlogged to July 22, 2006
 - India backlogged to May 8, 2006

Congressional Bills



- 📖 Many potential bills. Unlikely to see Comprehensive Immigration Reform (CIR) this year. Potential for “Piecemeal” Reform
- 📖 DREAM Act didn’t pass
- 📖 Most likely changes:
 - 📖 Recapture unused Family and Employment visas from previous years
 - 📖 Remove per country limits for Employment based Immigrant Visas