

Permanent Residence Worksheet

BU Workshop: November 12, 2019

Option 1: Sponsoring Yourself

Do you want to sponsor yourself? If so, follow these checklists for three different options:

- A. Do you have extraordinary ability in your field (top echelon) and meet at least 3 of these criteria?
- ✓ Won nationally or internationally recognized prizes or awards? _____
 - ✓ Been elected to membership in prestigious associations through merit? _____
 - ✓ Have published material *about* you in professional, industry/trade, or major publications? _____
 - ✓ Been asked to judge the work of others in your field? _____
 - ✓ Made original contributions of major significance to your field? _____
 - ✓ Authored scholarly articles in professional or major publications? _____
 - ✓ Displayed your work at artistic exhibitions or showcases? _____
 - ✓ Performed a leading or critical role in distinguished organizations? _____
 - ✓ Commanded a high salary or other high remuneration in relation to others? _____
 - ✓ Achieved significant commercial successes in the performing arts? _____

If so, you may qualify for **EB-1A classification**. Follow the EB-1A worksheet attached.

- B. Do you perform important and impactful work with exceptional ability and meet at least 3 of these criteria?
- ✓ Possess an advanced degree (master's or doctorate) related to your field of work or possess at least 10 years of full-time experience in your occupation? _____
 - ✓ Possess a professional license? _____
 - ✓ Command a high salary or other high remuneration in relation to others? _____
 - ✓ Possess membership in a professional association(s)? _____
 - ✓ Enjoy recognition for your achievements and significant contributions? _____
 - ✓ Demonstrated evidence of your exceptional ability in other forms (other forms undefined)? _____

If so, you may qualify for **EB-2 classification** through a **National Interest Waiver**. Follow the NIW worksheet attached.

- C. Alternatively, are you able to command a minimum \$900,000 investment?

If so, you can look into **EB-5 Investor** immigration path. Rules are subject to change, so check with an experienced attorney for the most recent information.

Option 2: Obtaining Employer Sponsorship

Do you have a job offer from a U.S. company? If so, you may have these two options:

- A. Are you a researcher or a university professor with at least 3 years of research/teaching experience and do you meet at least two of the following criteria?
- ✓ Won major prizes or awards? _____
 - ✓ Been elected to membership in prestigious associations through merit? _____
 - ✓ Have published material *about* your work in professional publications? _____
 - ✓ Judged the work of others in your field? _____
 - ✓ Made original scientific or scholarly research contributions? _____
 - ✓ Authored scholarly books or articles in scholarly journals with international circulation? _____

If so, you may qualify for **EB-1B classification**. Talk to your employer and follow the EB-1B worksheet attached.

- B. Do you have some prior work or research experience?

If so, you can go through the PERM process (it is open to almost anyone!) for **EB-2 or EB-3 classification**. Talk to your employer about whether they offer this form of sponsorship, and refer to the PERM worksheet attached for more information.

Questions? Contact Amber Davis at amber.davis@giafirm.com or another experienced immigration attorney. If you are asking your employer to sponsor you, talk to your employer first about their policies and immigration support.

EB-1A Extraordinary Ability Worksheet

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EB-1A is for people with “extraordinary ability”, in the top echelon of their field of work. This is usually described as the top 1%. Use this worksheet as a planning tool to organize your qualifications and visualize the gaps where you need to develop more.

List 5-8 experts in your field who might be willing to sign letters describing your extraordinary ability and supporting your immigration application. These experts should have unquestionable qualifications at the top of your field of work. At least 2-3 of them should be independent experts who have never worked with you directly but are familiar with your reputation and achievements.

_____	_____
_____	_____
_____	_____
_____	_____

*Planning tip: introduce yourself to experts at conferences and professional networking events. Make sure you introduce your work (practice the “elevator speech”) and obtain their contact information. Keep a record of who you met.

Use this checklist to see if you meet the criteria or are close to meeting the criteria. You need at least 3 checkmarks on the lefthand side, and then under each individual criteria you ideally want at least 1 or 2 checkmarks under each criterion on the righthand side.

_____	Won nationally or internationally recognized prizes or awards?	_____
	Was the organization that granted the award prestigious?	_____
	Are there other award winners who are very famous? What is the reputation of award winners?	_____
	If the prize/award was for a competition, was it at least a second-level competition not open to the public?	_____
_____	Been elected to membership in prestigious associations through merit?	_____
	Are other members of the association famous?	_____
	Is the criteria for membership strict and demanding of high qualifications?	_____
_____	Have published material <i>about</i> you in professional, industry/trade, or major publications?	_____
	Does any media mention you by name and praise your work?	_____
	Is the media widely circulated or does it have a prestigious reputation?	_____
_____	Been asked to judge the work of others in your field?	_____
	Did you review for any reputable journals, conferences, or competitions?	_____
	Were you asked to be on the advisory board of any journals or conferences?	_____
_____	Made original contributions of major significance to your field?	_____
	Can you provide metrics? Citations? Downloads? Expert endorsements? Revenue? Etc.?	_____
	Can you show that other experts have built on your contributions?	_____
_____	Authored scholarly articles in professional or major publications?	_____
	Is the journal prestigious? Does it have a high ranking?	_____
	Do you have higher than average citations for the journal? Did anyone famous cite your work?	_____
_____	Displayed your work at artistic exhibitions or showcases?	_____
	Is the exhibition/showcase invitation-only or does it have strict criteria for entry?	_____
	Did you win any recognition above other exhibitors through merit?	_____
_____	Performed a leading or critical role in distinguished organizations?	_____
	Do you have a high-level title such as CEO, CTO, Chief of R&D, Chief Researcher, etc.?	_____
	Is your name on contracts or internal influential documents such as comprehensive policy documents?	_____
	Is your name on patents owned by the company?	_____
_____	Commanded a high salary or other high remuneration in relation to others?	_____
	Is your salary in the top 10% according to reports like Robert Half, Payscale, Glassdoor, etc.?	_____
	Can you get an opinion from a headhunter or recruiter in your field that your salary is high?	_____
_____	Achieved significant commercial successes in the performing arts?	_____
	Can you demonstrate ticket sales above average in reputable venues?	_____
	Is there media about your successful sales?	_____

*Planning tip: metrics is key! Build comparisons at every point. Use the checklist above as a starting point to build up your comparison points under each criteria that you are aiming for. Also, keep all documents for everything you do. Even print emails.

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EB-2 National Interest Waiver
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Most people demonstrate qualifications for EB-2 through a National Interest Waiver by demonstrating (1) that their work is important to the interests of the United States and (2) they have unique qualifications or “exceptional ability” in that field of work. There may be other ways to qualify and other considerations, so talk to an attorney before deciding whether or not to pursue this option. This worksheet is meant to prepare you for a future NIW petition.

Step One: Achieve your Ph.D. You only need a master’s degree (or alternatively 10+ years of experience), but it is easiest if you have a Ph.D.

List 5-8 experts in your field who might be willing to sign letters describing your past achievements, present work, and future potential. These experts should have strong qualifications as experts in your field of work.

Think about how to define your field of work. You don’t want to say your field is “medicine” if you can say it is “viral vector cancer therapy”. Defining the field narrowly will help show off your expertise and the value of your research to the United States. Write some options for defining your field here, starting broadly and narrowing further for practice.

Develop objective measures of expertise. In addition to having the education or experience qualifications mentioned above, you need to meet two additional criteria. You need to check off at least two boxes on the lefthand side.

☐ Do you possess a professional license? If there is one available in your field, consider pursuing it.

☐ Command a high salary or other high remuneration in relation to others?

Is your salary in the top 10% according to reports like Robert Half, Payscale, Glassdoor, etc.? ☐

Can you get an opinion from a headhunter or recruiter in your field that your salary is high? ☐

☐ Possess membership in a professional association(s)?

Are other members of the association well regarded experts? ☐

Is the criteria for membership strict and demanding of high qualifications? ☐

Do you hold a position in the association? ☐

☐ Enjoy recognition for your achievements and significant contributions?

Has your work been cited a respectable number of times? ☐

Is your work patented? ☐

Has your work been monetized and is it producing revenue for a company? ☐

Are you and/or your work the subject of any news or professional publication articles? ☐

Have you been asked to review publications or other work because of your qualifications? ☐

☐ Demonstrated evidence of your exceptional ability in other forms?

Other forms are undefined, but they are worth exploring if your field of work does not have many membership associations or ways to demonstrate achievement or significant contribution that are public and sound prestigious. If you have an idea, talk to an attorney about it.

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EB-1B Outstanding Professors and Researchers

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Do you have a job offer from a U.S. organization? If so, it needs to be from a company that meets one of these criteria:

- ✓ If you are a professor, you need to be offered a tenure-track professorship.
- ✓ If you are a researcher, your company needs to demonstrate that it is a research institution,
- ✓ If you are a researcher at a company with broad operations, the company needs to demonstrate that it has achieved significant research success and will employ you in a research role.

A note on payment: many employers will pay to sponsor their employees for EB-1B green cards. However, if they will not pay, you may pay any legal or filing fees for the EB-1B process, or you may reimburse your employer. Your employer still needs to sign the petition and promise USCIS to employ you after you receive your green card, but your ability to pay for this process opens up your options when you are discussing with your employer.

You need at least 3 years of research or teaching experience before you can apply.

You also need to meet 2 additional criteria to determine if you are outstanding in your field. Use this checklist to plan for meeting the criteria.

- _____ Won major prizes or awards?
Was the organization that granted the award prestigious? _____
Are there other award winners who are very famous? What is the reputation of award winners? _____
If the prize/award was for a competition, was it at least a second-level competition not open to the public? _____
- _____ Been elected to membership in prestigious associations through merit?
Are other members of the association well regarded experts? _____
Is the criteria for membership strict and demanding of high qualifications? _____
Do you hold a position in the association? _____
- _____ Have published material *about* your work in professional publications?
Does any media mention you by name and praise your work? _____
Is the media widely circulated or does it have a prestigious reputation? _____
- _____ Judged the work of others in your field?
Did you review for any reputable journals, conferences, or competitions? _____
Were you asked to be on the advisory board of any journals or conferences? _____
- _____ Made original scientific or scholarly research contributions?
Can you provide metrics? Citations? Downloads? Expert endorsements? Revenue? Etc.? _____
Can you show that other experts have built on your contributions? _____
- _____ Authored scholarly books or articles in scholarly journals with international circulation?
Is the journal prestigious? Does it have a high ranking? _____
Do you have higher than average citations for the journal? _____
Did anyone famous cite your work? _____

*Planning tip: metrics is key! Build comparisons at every point. Use the checklist above as a starting point to build up your comparison points under each criteria that you are aiming for. Also, keep all documents for everything you do. Even print emails.

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The PERM Process for EB-2 and EB-3 Classification

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This is not a worksheet because you, the individual immigrant employee, will have minimal input into this process, and your personal qualifications have little bearing on the first few stages. This is an outline of some key concepts and expectations at each stage.

A note on payment: ***your employer must pay*** for all costs associated with the first three steps outlined below. This is a legal requirement, and any payment that you make may undermine the validity of the outcome. PERM applications are often costly, being thousands of dollars in most cases. Talk to your employer carefully and consider your other options first.

Step 1: The Prevailing Wage Determination

Your employer sets the job description for your job. They need to look at your job objectively, writing down the duties for your role and providing the *minimum* education and experience levels that they would accept when hiring for your role.

Note: it is very common for jobs to be Ph.D. preferred, but in reality require a *minimum* that is much less. You may have a significant advantage when applying for these jobs, but your employer may have a very different idea of what the minimum qualifications are. Do not let this feel like a de-valuation of your skills. This is an exercise the employer needs to take seriously even if you are a stellar employee. This means that even if you have a Ph.D., it is possible that the *minimum* requirement for your job may be a bachelor's degree with a couple years of experience. If this is true, your employer needs to file a job description that will result in EB-3 classification. They cannot change it to EB-2 based on your own background and achievements.

Your employer sends the job description to the Department of Labor, who then issues a Prevailing Wage Determination (the minimum you need to be paid at the end of the process) within 2-5 months.

Step 2: The Labor Market Test (Recruitment)

Your employer is required to advertise your position and fairly screen and consider any minimally qualified applicants who are U.S. workers. This process takes a minimum of 2 months and can take much longer. If a minimally qualified applicant is found, even if you are a much better qualified person, your employer either needs to hire that person or stop the process and try again after a legally required waiting period has passed.

Step 3: Filing the PERM Application with the Department of Labor

Your employer submits an online application with the Prevailing Wage and Labor Market Test details, as well as your personal details and work history, to the Department of Labor. The DOL usually certifies these within 2-5 months.

For H-1B holders, you want your PERM application to be filed before the end of your 5th year in H-1B status. This allows you to extend your H-1B status past the 6-year maximum. This is especially important for individuals born in China or India, where backlogs at the end of the process can be significant.

Step 4: Filing for EB-2 or EB-3 Classification

Your employer needs to file an I-140 petition with USCIS to further affirm the terms of employment in your PERM. This I-140 petition is what grants the "EB-2" or "EB-3" classifications.

Step 5: Filing the Green Card Application When Priority Date is Current

If there is no backlog, you can file your green card application simultaneously with Step 4. If there is a backlog for your country of birth, you need to wait for your priority date to become current before you can apply. This can take many years if the backlog is severe.

*****Important***** You need to maintain status and work authorization independently through a nonimmigrant visa while you wait for your priority date to become current. Pay attention to max-out dates and apply for permanent residence well in advance of any max-out date. The H-1B is particularly attractive to individuals from China and India because it can be extended indefinitely past the max-out date if the PERM has been filed on time, so even if you are in a different non-immigrant visa category, consider switching to H-1B to take advantage of indefinite extensions.

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