

# The National Interest Waiver

**By: Donald W. Parker**

The National Interest Waiver (NIW) is part of the second employment-based category (EB-2) for aliens of exceptional ability in sciences, arts or business and advanced degreed professionals (M.A., M.S., M.E., M.D. or Ph.D.). Customarily, an EB-2 case requires that the foreign national have an offer of employment from a U.S. employer and that that employer have first obtained approval of a Labor Certification Application. These two requirements are, however, waived if the foreign national can establish that his or her admission to permanent residence would be in the national interest.

**The requirements for establishing eligibility for a National Interest Waiver are as follows:**

- The foreign national must either evidence that they have exceptional ability or have an advanced degree;
- The foreign national must have or be seeking employment in the United States in an area of substantial intrinsic merit;
- The proposed benefit of the foreign national obtaining their U.S. permanent resident status must be national in scope; and
- The national interest of the United States would be adversely affected if a Labor Certification application were required of the foreign national.

## **What constitutes “substantial intrinsic merit”?**

The standard here is whether the occupation will serve to enhance or promote an important goal of the United States. Documentation should be provided that establishes the validity of the particular national goal and then some nexus should be drawn between the foreign national’s occupation and that goal. In some cases this is relatively easy – a cancer researcher working on the treatment and cure to a particular type of cancer that is prevalent in the United States.

## **What constitutes a benefit that is “national in scope”?**

The standard here is whether the activities of the foreign national will have a broad national impact or whether that impact will be local or only regional. In practice the CIS has been fairly liberal in its interpretation of this prong and if the case has successfully identified a goal of the United States that has “substantial intrinsic merit”, then that goal will usually meet the standard of being national in scope.

## **How do you establish that the national interest would be adversely affected by requiring that the foreign national go through the Labor Certification application process?**

This is the most challenging prong of the National Interest Waiver rules. The application must show that the foreign national’s participation in the field of “national interest” considerably outweighs the

inherent national interest in protecting U.S. workers through the Labor Certification application process. Playing an important role in a project is not sufficient – rather evidence must be provided that the foreign national will significantly benefit the work in the field. Similarly, presenting the foreign national credentials as impressive is not sufficient – rather they must be unique to the overall project and identified goals. The foreign national must be engaged in “cutting-edge” work that sets him or her apart for their peers.

**Documentation for a successful National Interest Waiver case will customarily include some or all of the following:**

1. Documentary evidence of the achievements of the foreign national consisting of academic credentials, published articles and poster presentations, presentations at conferences, citations to the foreign national’s work and letters from other VIPs in the field attesting to the unique character of the foreign national’s current work.
2. Articles from the media about the United States goal that is of significant national importance.
3. One or more letters from outsiders attesting to the work being done by the foreign national in the context of the significant national goal. Ideally, one of these letters would come from someone high-up in a Federal Agency who could talk knowledgeably about the work being done by the foreign national and support the National Interest Waiver.

**For more information...**

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