

American Immigration: Do-It-Yourself Employment Based EB-2 National Interest Waiver (NIW) Green Card Application Kits

Tina S. Wu



**An Educational EB-2 NIW Handbook
- Sponsoring yourself
for a green card through
an EB-2 National Interest Waiver**

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There are many things that your attorney may not tell you before you pay the expensive legal fees. This educational employment based EB-2 NIW handbook is a Do-It-Yourself kit and also is an education kit that lead you go through the procedure of the NIW application.

You will be able to self-evaluate your case before you go to see a fee-based consultation and let you know if you may qualify for an EB-2 NIW, or if not, you may just give up NIW option and save money and time to pursue other options.

Inside this Do-It-Yourself kit, you will find the methods of how to prepare the NIW petition, how to collect evidence, how to show your achievements, how to prove your exceptional ability, and how to write the petition cover letter and the reference letters. You also find step-by-step procedures for the National Interest Waiver petition, various petition strategies, detailed sample cover letter, detailed sample reference letters in different formats and academic fields, sample of filled forms, complete petition check list, petition required forms, example of denied NIW cases, how to appeal a denied NIW petition, and recent change and regulation on NIW.

Sponsoring yourself for a green card through an EB-2 National Interest Waive, bypass the slow, expensive and restrictive burdens of the typical employment-based green card process.

If you apply for U.S. Green Card by yourself, or if you have a lawyer to work for you, you will find this EB-2 NIW kit very efficient and helpful. With the NIW kit, you get all the information you need and the step-by-step procedures and knowledge of how to file a NIW petition and obtain your Green Card quickly, without the requirement of Labor Certification, or an actual employment, job position or job offer.

Even you still prefer to give your case to an expensive law firm to proceed, I advise you to read this NIW educational handbook first. After read this handbook, you will gain the knowledge and power of finding an experienced law firm with a strong background in filing EB-2 NIW to assist its applicants in your NIW petition.

The USCIS shift not only leads to additional work that makes EB-2 NIW petitions more time consuming and nerve-wracking for NIW applicants, but also leads to a greater number of denials. Knowledge is power. Read this educational EB-2 NIW handbook first, get prepared and build a strong case with your NIW application.

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Chapter One

Understand the Important Issues of the EB2 National Interest Waiver (NIW) and Self-Petition

1. Understand the EB2 National Interest Waiver (NIW) Immigration Petition, Its advantages and factors

1) Understand the EB2 National Interest Waiver (NIW) Immigration Petition

The Employment-based Second Preference (EB2) immigration category involves members of the professions who hold advanced degrees and individuals of exceptional ability in the sciences, engineering, business, or arts. Although this category generally requires an employer's sponsorship and Labor Certification, the United States Attorney General may waive these requirements if an alien applicant's work is in the United States National Interest.

Since 1990, the Immigration Act has provided that an alien of exceptional ability may obtain a "waiver of job offer" if such waiver is deemed to be in the "National Interest." It applies only to professionals holding advanced degrees and exceptional ability aliens. In fact, the regulations provide that a waiver of a job offer also includes a waiver of the Labor Certification requirement. The petitioner may file Form ETA-750, Part B, or Form ETA-9089, in duplicate, in support of the Form I-140 petition. Either form is acceptable.

The National Interest Waiver (NIW) is the best choice for those aliens who do not wish to wait a long time for Labor Certification process, and those aliens who do not want to be limited to a specific employer during the long Green Card application process. Also, an alien applicant does not need to have a permanent job offer in the United States to apply for a Green Card in this category.

The National Interest Waiver Green Card petition can either be filed by an alien applicant, or can be sponsored by a U.S. employer. An alien applicant may also file additional Green Card applications in other categories, while a National Interest Waiver petition is pending.

In order to file a National Interest Waiver petition, an alien applicant's work must benefit the U.S. National Interest. Since the term "National Interest" has not been defined in the statute by U.S. Citizenship and Immigration Services (USCIS), certain factors are taken into account in determining the national interest. These factors include improvement of the U.S. economy, wages and working conditions for U.S. workers, education, health care, the environment, and housing.

2) The Advantages of National Interest Waiver Immigration Petition

The most notable advantage for those who qualify for an EB2 NIW petition is the lack of a Labor Certification requirement. The National Interest Waiver is one category of applying for the U.S. Green Card by which the cumbersome application procedure of Labor Certification is bypassed.

The Labor Certification usually is a prerequisite to get U.S. Green Card via second preference EB2 or EB3 employment, and has to be applied from the U.S. Department of Labor. If an alien is providing or will provide the services that fall into the U.S. National Interest categories, the alien may apply for U.S. Green Card through the NIW, which means an alien applicant does not need a Labor Certification and does not need a job offer of employment. Therefore, it may save a considerable amount of time and allow an alien applicant to not be tied to a specific employer.

Obtaining a Labor Certification can be a time-consuming and expensive process that seeks to

determine whether a qualified U.S. worker is available to fill the position sought by the petitioning alien. In addition to the time and expense required by the Labor Certification process, an alien risks being denied a Labor Certification if a U.S. worker with technical qualifications for the employment is found, even if the alien is actually more suitable for the position based on factors not considered in the Labor Certification process.

In an EB2-based NIW petition, the Labor Certification is not required at all. Also for NIW petition, a permanent job offer is not required, and an alien may petition immigration by himself or herself without a U.S. employer's sponsorship. But for Labor Certification based petitions, a permanent job offer is required, and a U.S. employer must be the petitioner.

In summary, the advantages of National Interest Waiver petition include:

- i) Freedom - No need for a permanent job offer of employment; No need for labor certification; No need to be tied to a specific employer during the whole Green Card application process;
- ii) Speed - The NIW belongs to the second preference EB2 employment-based immigration, the immigrant visa number waiting time is much shorter, sometimes is several years shorter, than the EB3 based immigration application (often, the immigration visa numbers in the EB3 category are not available or not "current", after aliens obtain their Labor Certification.)
- iii) Savings –Avoid expensive advertising fees and submissions to many different agencies.
- iv) If you are in the U.S., you may also apply for work permits and international travel documents for you, your spouse and your children to use while the petition is pending.

3) The **Seven Factors for a National Interest Waiver Petition**

Section 203(b)(2) of the Immigration Act requires that all aliens seeking to qualify as having exceptional ability show that their presence in the United States would substantially benefit prospectively the national economy, cultural or educational interests or welfare of the United States, and adds the additional test of "national interest" to those who wish the job offer waiver.

Neither Congress nor USCIS defined the term "national interest" in either the Immigration Act or the regulations, in order to leave the application of this test as flexible as possible. However, an alien seeking to meet the national interest standard must show significantly more than "prospective national benefit" required of all aliens seeking to qualify as having exceptional ability. The burden rests with the petitioner to establish that exemption from, or waiver of, the job offer requirement will be in the national interest. Each case is to be judged on its own merit.

An alien may apply for U.S. Permanent Residence status (or Green Card) and seek a waiver of Labor Certification by establishing that his or her admission to permanent residence would be in the U.S. National Interest. To qualify for National Interest Waiver immigration, an alien should hold an advanced degree and possess exceptional ability in the sciences, engineering, business or arts. The USCIS Appeals Board issued a decision that sets forth a number of factors upon which the "National Interest" can be determined. These factors are:

- i) Improving the U.S. economy;
- ii) Improving wages and working conditions of U.S. workers;
- iii) Improving education and training programs for U.S. children

and under-qualified workers;

iv) Improving health care;

v) Providing more affordable housing for young and/or older, poorer U.S. residents;

vi) Improving the environment of the United States and making more productive use of natural resources; or

vii) A request from an interested U.S. government agency.

While satisfying any one of these factors should be sufficient, a discussion of as many of these factors as possible makes a stronger application. These factors are not exclusive, and other factors can also be presented to USCIS, if they can be shown to be in the National Interest.

2. The Three-prong Test (NYSDOT) and the Differences and Similarities of NIW and EB1

1) The Three-Prong Test Set Forth in Matter of New York State Department of Transportation

The employment-based immigration is one of the most popular ways to obtain U.S. permanent residency. The EB2 NIW permanent residency process is a two-application process. One application is called the Form I-140 petition, which is filed for an immigrant visa and can be filed by a U.S. employer, or it can be self-petitioned by an alien in the case of National Interest Waiver. The other application should be filed by an alien, and it is called the Form I-485 application to change his or her status to a permanent resident of United States.

There is no statutory standard as to what will qualify an alien for a National Interest Waiver. The USCIS considers each case on an individual basis. However, obtaining approvals in the NIW category became more difficult as a result of a case known as New York State Department of Transportation (NYSDOT). USCIS has been scrutinizing the NIW petitions more carefully after the NYSDOT case.

Most NIW petitions should argue their qualification around the Three-Prong Test set forth in Matter of New York State Department of Transportation (AAU, 1998):

(1) The alien seeks employment in an area of substantial intrinsic merit: The alien's employment must be important to the national interests of the United States. Additionally, the benefits of the alien's employment should be immediately apparent to the national interest of the United States.

(2) The benefits of the alien's proposed employment must be national in scope: The alien's employment may be limited to a particular geographic area. However, the petitioner must establish that the alien's employment would benefit other regions of the country as well. Moreover, there would be little or no adverse impact on the interests of other regions of the country.

(3) It would be contrary to the national interest to potentially deprive the prospective employer of the alien's service by making available to U.S. workers the position the alien seeks: There are three elements to this requirement:

(a) the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same

minimum qualifications;

(b) the alien is not seeking a national interest waiver based on a shortage of qualified workers in a given field, regardless of the nature of the occupation;

(c) the petitioner must establish the alien has a past record of specific prior achievement, which justifies projections of future benefit to the national interest.

2) The Similarities and Differences between the Immigration Categories of "National Interest Waiver" and "Alien of Extraordinary Ability", as well as "Outstanding Researcher or Professor"

Both NIW and EB1 (EB1-Extraordinary Ability, and EB1-Outstanding Researcher or Professor) immigration categories are employment-based immigration for U.S. permanent residency, without the requirement of Labor Certification. They have similarities, but also have several key differences.

A. The similarities include:

- i) Neither requires a Labor Certification;
- ii) Both NIW and EB1 categories require extensive evidence of achievement and excellent ability;
- iii) Some supporting documentation for each petition is similar.

B. The differences include:

- (a) A NIW petition depends more on an alien's current research work or projects, so that the alien will serve the U.S. National Interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications;
- (b) Both EB1-Extraordinary Ability petition and EB1-Outstanding Researcher or Professor petition depend more on an alien's previous achievements and accomplishments in a field, to prove that the alien has "extraordinary ability" or "outstanding ability";
- (c) Both EB1- Extraordinary Ability and EB1-Outstanding Researcher or Professor categories generally require higher achievement and ability than that required by NIW;
- (d) The EB1- Extraordinary Ability category can apply to many different fields in the sciences, arts, education, business, or athletics, while the National Interest Waiver category generally applies to scientific, engineering, or scholarly fields;
- (e) Both National Interest Waiver and EB1-Extraordinary Ability categories require no specific employment or job offer, while the EB1-Outstanding Researcher or Professor category requires a job offer for a permanent research position or a tenured/tenure track teaching position;
- (f) One can self-petition in the National Interest Waiver or in the EB1-Extraordinary Ability category without a U.S. employer's sponsorship, while the EB1-Outstanding Researcher or Professor

category requires a sponsorship from the alien's employer or prospective employer;

(g) The EB1-Outstanding Researcher or Professor category requires at least three years experience in the field, while the National Interest Waiver and EB1-Extraordinary Ability category has no specified minimum experience requirement for any particular field.

3. The Advantages of Self-petitioning, Disadvantages of Employer-based Petition and hire a lawyer

1) The Self-petitioning for National Interest Waiver

The self-petitioning for EB2-National Interest Waiver (NIW) is an important part of U.S. Green Card application. The self-petitioning for National Interest Waiver does not necessarily refer to filing an application without any help from your employer, but it refers to filing a Form I-140 petition in the National Interest Waiver category by yourself as both the petitioner and the beneficiary.

Most self-petitioners need help from their employers to prepare the required documents, and many employers provide such support in document collection for self-petitioners. The U.S. Citizenship and Immigration Services (USCIS) Form I-140 is used for employment based Green Card applications and for National Interest Waiver petition. The National Interest Waiver petition can be filed without a job offer, which still falls under the employment based immigration application.

If you are considering applying for a Green Card in the NIW category, you should know the advantages of self-petitioning for National Interest Waiver and the disadvantages of employer-based petitioning.

2) The Advantages of Self-petitioning for U.S. Green Card in the Category of National Interest Waiver

Many aliens who have advanced degrees have applied for Green Cards through the National Interest Waiver. The advantages are obvious: you do not need to have a permanent job offer, you do not need to apply for a Labor Certification, and you do not need to be tied to a specific employer. In fact, whether you are a postdoctoral fellow, a graduate student, or a research assistant, if you are working on a project funded by NIH, NSF, NASA, DOD, DOE, DOT, etc, you may have a good chance to get Green Card through the National Interest Waiver, and you can save thousands of dollars compared with hiring a lawyer.

The major advantages of self-petitioning for National Interest Waiver include:

- a. You choose your immigration category: You are the person to choose your U.S. immigration category, not your employer or a lawyer. By choosing the EB2-National Interest Waiver category, you can save time by bypassing the long-time process of Labor Certification. Since the National Interest Waiver application cuts down the requirement to obtain Labor Certification from the U.S. Department of Labor, the path to receive a Green Card is shorter, and you do not have to have a job offer of a permanent position from a U.S. employer. In many cases, the U.S. Department of Labor has turned down a

Labor Certification application because the alien failed to convince the Department as to why the employer was not able to hire someone from the local candidate pool, when many U.S. citizens are available in the labor market.

b. You have flexibility to change job: The application in the National Interest Waiver category gives you flexibility and the option to move between different U.S. employers. You have the freedom to change employers. You do not need to stay with your current employer during the entire Green Card application process, and this advantage gives you a leverage, which most immigrants do not have. For immigration petitions based on Labor Certification, an alien has to stay with the petitioning employer for the entire Green Card application process, in some cases, which means working for an employer without a pay-raise, or even having to take pay-cuts because the alien applicant does not have any other choice.

c. Your immigration petition case is always valid: Because a NIW petition does not depend on your current employer, if you change jobs or get laid off, you will not lose your chance of obtaining a Green Card, and your petition case is still valid. Since you do not have to work for the same employer, it is safer for you to survive the possible company layoff or economic downturn. Even if you change employers or are laid off and cannot find work temporarily, it does not affect your self-petitioned National Interest Waiver application.

d. The immigrant visa number availability: After the Form I-140 approval, an alien needs an immigrant visa number to file a Form I-485 application. The Visa Bulletin is generally published around the middle of the preceding month. The Visa Bulletin reflects available visa numbers for cases with priority dates before the listed dates. The NIW belongs to the second preference EB2 employment-based immigration, and the immigrant visa number waiting time is much shorter, sometimes several years shorter, than the EB3 based immigration application. Often, the immigration visa numbers in the EB3 category are not available or not "current", after aliens obtain their Labor Certification.

To check the current Visa Bulletin, please visit <http://travel.state.gov/>, then click the link "VISAS" and "Visa Bulletin".

The other advantages of the self-petitioning for National Interest Waiver include:

- i) You have the ability to avoid dependence on an employer or a lawyer;
- ii) You control your Green Card application case and process, and it is not controlled by your employer or a lawyer;

- iii) You do not have to have a job offer from a U.S. employer for the NIW application;
- iv) You save a lot of money as compared to hiring a lawyer.

3) The Disadvantages of Employer-based Petition

The employers who file Green Card applications for the alien employees often provide support for document collection. However, the employers often pick the easy pass for them, and go through the lengthy Labor Certification process. Thus, it slows down the entire Green Card application process, and sometimes it becomes impossible to obtain a Green Card for years, due to the alien's visa time restriction or the unavailability of an immigration visa number.

Another disadvantage of employer-based petition is that many employers will use their own attorney. Most of these company hired attorneys are good at business law, but not at immigration law. Therefore, the company hired attorneys may concentrate on temporary visas, such as H-1B visa in most cases, or a simpler Labor Certification process. Since the National Interest Waiver petition is unfamiliar and complex to them, they simply do not want to spend too much time on the process. In other words, most of the company hired attorneys are general practice lawyers, not attorneys specialized in complicated Green Card applications like the National Interest Waiver.

4) The Disadvantages of Hiring a Lawyer by Yourself

In fact, there are not many people have good experiences with attorneys during their applications of Green Cards. If you are going to apply for Green Card based on the National Interest Waiver by hiring a lawyer, you need to spend at least \$4,000 (the normal range is about \$4000 to \$8000) for the attorney fee, which does not even include the application fees to USCIS. During the application process, most likely you will completely lost the control as to how fast you would like the process to go, once the contract has been signed and the payment has been made to the lawyer.

After you signed the contract, your attorney normally may tell where to find related information, email you forms for Green Card application, give you 2-3 sample letters of recommendation to follow, and may also give you a to-do list. After months of you hard work, finally the attorney will construct a Form I-140 petition cover letter for you, based on all the documents and reference letters that you provided. You need to remember that an attorney may have hundreds of cases to deal with at the same time. So, he or she has to be fair to every client, and could not spend too much time on your case at the expenses of others.

Although an attorney may promise that your process would depend on how well you prepare the documents, but he or she may keep to convince you that your case is not strong enough, even though you may have more than ten articles published in academic journals and two patents pending. In fact, there is nothing you really could do, since the contract may say very clearly "No guarantee has been made as to the time this case will take, neither to the successful outcome of this case."

Therefore, if you know that you have to go through the process all by yourself, you may better do it on your own at the first place. On the other hand, you should not blame the lawyers for what they are doing, because they cannot possibly know all the technical details which are of U.S. National Interest in your specific research and some specific evidence, which could be critical to your case.

Chapter Two

Petition Requirements, Preparations, Critical Matters, and Self-Evaluation

1. Detailed requirements of NIW Petition, and Critical Matters to Prove Your Exceptional Ability to Benefit U.S. National Interest

(1) The Exceptional Ability Requirement in the Sciences, Engineering, Arts or Business for NIW Applicants

For a National Interest Waiver petition, an alien applicant should have Exceptional Ability in the sciences, engineering, arts or business, and have advanced degree (holding a Master or Doctor degree).

To qualify for the criteria of Exceptional Ability, an alien applicant should at least meet three of the following six criteria:

- 1) An official academic record showing that the alien 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;
- 2) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- 3) A license to practice the profession or certification for a particular profession or occupation;
- 4) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. To satisfy this criterion, the evidence must show that the alien has commanded a salary or remuneration for services that is indicative of his or her claimed exceptional ability relative to others working in the field.
- 5) Evidence of membership in professional associations; or
- 6) 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 beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

(2) The Qualification Requirement for a National Interest Waiver Petition

Petitions

Typically, aliens who were successful in NIW petitions presented their cases by establishing themselves as having exceptional skill, experience, or knowledge, which set them apart from their professional peers. But a NIW petition with documents simply stating a certain level of competence will not be sufficient to receive a National Interest Waiver approval. Rather, a proficiency that is greater than mere competence is expected for those seeking a National Interest Waiver petition approval.

The important issue to keep in mind when applying for the National Interest Waiver category is your exceptional ability, which will benefit the U.S. National Interest. An applicant has to show that he or she is not the normal average individual in the field. Although it may take years of

studying and training to be able to just participate in a field, but that is not enough. The applicant has to show that he or she truly stands out among the crowd in knowledge, skills, and talent.

Additionally, recommendation letters included in a NIW petition package should testify the alien applicant's unique skill and experience, and the credentials of the individuals who write such letters will be reviewed by USCIS to determine whether they are qualified to make such evaluations. Also, the NIW applicants should be aware that the USCIS has become increasingly strict in its interpretation of what it considers to be in the national interest.

(3) The Critical Matters to Prove Your Exceptional Ability to Benefit U.S. National Interest

In order to qualify for a National Interest Waiver petition, an alien applicant must demonstrate that the benefit of his or her activity to the nation is greater to outweigh the nation's interest inherent in completion of the Labor Certification process. Therefore, an alien applicant must satisfy all of the following requirements to obtain the National Interest Waiver:

- 1) the applicant seeks work in an area of substantial intrinsic merit; and
- 2) the proposed work will benefit the nation as a whole; and
- 3) The alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications, and the national interest would be adversely affected if the alien is required of a labor certification.

Generally speaking, the first criterion is the easiest to meet, most jobs have intrinsic value to U.S. national interest, and actually many jobs can be applied to national in scale.

Also, an alien applicant must clearly demonstrate that the applicant's past record substantiates projections of future benefits to the U.S. national interest. An alien applicant must establish, in some capacity, his or her ability to serve the national interest to a substantially greater extent than a majority of his/her colleagues. An alien applicant should also demonstrate his or her influence on the field of employment.

For researchers and engineers, publishing papers and articles is a common product of their work. But if an alien applicant can show that the publications have appeared in the prestigious journals, this will help establish the alien as an exceptional applicant. Furthermore, if this applicant's work is commonly referred to and cited by other articles, or if he or she is frequently asked to sit on panels and review other people's work, this evidence will help demonstrate the qualifications as an exceptional alien.

Example 1: Dr. Wang is a post-doc researcher in civil engineering at a university in California. For the last three years, he had been working for the university in a H-1B status. Prior to come to U.S., he had worked for four years in a similar institute in his home country, China. He had co-authored several papers in the nationally recognized journals. His many years of experience and considerable success in the field of civil engineering and structural safety qualify him as a priority worker with exceptional ability, and he is working in an area of substantial intrinsic merit. His future work will benefit the nation as a whole by improving the structural safety and efficiency of bridge inspections, and reducing the costs associated with bridge classification and inspection. Because of his exceptional talent in his field, it can be expected that Dr. Wang's research will result in greater contributions than those of most of his peers.

Example 2: As a research associate, Mr. Raj's work has been cited at least 80 times by his peer researchers, and he has extensive experience in the field of biomedical research, particularly in the area of molecular genetics research. Mr. Raj received his MS degree from one

of the top schools on the East Coast of U.S., after earning his B.S. from the department of microbiology at one of the most prestigious schools in India. He has also conducted award-winning research at internationally recognized institutions like the School of Medicine at New York University, and his work has been published in such leading journals as Genetic Science and The Journal of Bioscience. Mr. Raj qualifies as an NIW candidate since the benefit of his proposed work is national in scope, and his research would be adversely affected if the Labor Certification process was required for Mr. Raj, because it is likely that his work will not progress as well without Mr. Raj's exceptional contributions, considering the length of time it takes to process a Labor Certification.

For physicians applying for NIW, the qualified alien physicians should agree to work at least five years in an area of the U.S. with a shortage of health care professionals are entitled to National Interest Waiver. There are no absolute requirements as to who could qualify for a National Interest Waiver, but an alien physician must be able to demonstrate that he or she is seeking work in the area of substantial merit to the United States, and the approval of his or her Permanent Residence would be in the national interest; and delay or discontinuation of his/her activity due to the requirement of a Labor Certificate will adversely affects the national interest.

(4) Detailed Requirements to Prove Your Exceptional Ability to Benefit U.S.

National Interest

Provide evidence that the benefits of your proposed employment will be in national scope. Your employment may be limited to a particular geographic area. However, you must establish benefit to more than one particular region of the country. Moreover, there should be little or no adverse impact on the interests of other regions of the country.

Submit evidence that you seek employment in an area of substantial intrinsic merit. Your employment must be important to the national interests of the U.S. Additionally, the benefits of your employment should be immediately apparent to the national interests of the United States.

Submit evidence related to your ability to perform the duties of the proposed employment position. To be considered in the national interest, you should show significantly above what necessary to prove the "prospective national benefit" required for all aliens seeking to qualify as "exceptional." The exceptional is defined under USCIS regulations as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business."

You must persuasively demonstrate that the national interest would be adversely affected if a Labor Certification were required. You must demonstrate that it would be contrary to the national interest to potentially deprive a prospective employer of your services by making available to U.S. workers the position you seek. If self-employed, you must also establish that the national interest would be adversely affected if a Labor Certification were required.

You should establish that you are not seeking a national interest waiver based on a shortage of qualified workers in a given field, regardless of the nature of the occupation. The NIW is not warranted solely for the purpose of ameliorating a local labor shortage.

If you demonstrate that you hold a patent or are responsible for an innovation, then you must demonstrate that the specific innovation serves the U.S. national interest.

2. Instructions of Petition Preparatory Steps to Build a Strong Case

(1) The Guidance of Petition Preparatory Steps and the Reference Letters

If an alien applicant can meet its requirements, the National Interest Waiver may be the best choice for a Green Card application, due to its employment independence and freedom. An

applicant needs to have exceptional qualifications to meet the stringent requirements of NIW, set up by USCIS to evaluate the applicant's qualification and achievements in a field.

The initial preparatory step takes place before filing the Form I-140 petition based on the National Interest Waiver. The length of this process varies for different person. Some people may be ready for filing the Form I-140 in weeks, while others may take several months. In the initial preparatory step, an applicant needs to work on the following issues:

- 1) writing a summary of your abilities and achievement in your field;
- 2) drafting and collecting reference letters from experts in your field;
- 3) preparing supporting documents such as diplomas, awards, professional memberships;
- 4) collecting evidence of your achievement and published papers.

The reference letters must meet certain requirements. They are not ordinary recommendation letters for employment purpose. To successfully support a NIW petition, good reference letters are necessary. Some referrers may want the applicant to provide a first draft for them to begin with. Generally, three or more reference letters should be obtained. There is no requirement that an applicant must have reference letters. But due to the importance of the reference letters, it has become a recommended practice to obtain three or more of them.

A good reference letter should not simply praise the applicant to meet the requirements in the NIW category, and such a practice will result in failing to support crucial legal arguments. Drafting and revising reference letters have particular importance, because the contents of the letters are a significant part of the foundation of a NIW petition.

(2) Have Your Previous and Current Employers to Work With You

For NIW petition, there are two ways to file the petition:

- 1) You can petition for yourself without your current employer's formal sponsorship. This means that you are both the petitioner and the beneficiary. In such a case, you should sign the Form I-140 and the petition cover letter, which should not be signed by your current employer; or
- 2) Your current employer is the petitioner, and you are the beneficiary of the petition. Because your employer is the petitioner, you can prepare all the documents and collect all the evidence, but your employer needs to sign the Form I-140 and the petition cover letter for you.

For each way of the petition, besides asking people to write reference letters for you and collect evidence as mentioned above, you may need to have your previous and current employers to help your petition. Some employers, especially large companies and major universities, have become experienced and have established a system to process the NIW petition. These employers may take care of everything except to find people to write reference letters for you.

However, in most situations, an employer will not take the responsibility of your NIW petition. In such a case, you may want to persuade the employer to help your application. This means that you should do almost everything, and your employer's involvement includes providing company documents, applicant's contributions, project and research achievement, recommendation letters, and so on.

For most people, it is an advantage to work directly on your own Green Card application case in NIW category, because much of the process is under your control, not under your employer or a

lawyer's control. If your Green Card application is totally left to an employer, it may take long time for an employer to file a Labor Certification application and then file a Form I-140 application (and later found that there are no immigration visa numbers available in EB3 immigration category), when it could be done by yourself within several months and without the Labor Certification at all. Because employers usually do not have a motivation to speed up an employee's Green Card application process.

(3) How to Prepare Your National Interest Waiver Petition and Build a Strong Case

In a National Interest Waiver petition, the emphasis is laid on both of your current work in the U.S. national interest and your personal achievements in a field, and to prove that you are working in an area of substantial intrinsic merit and your work will benefit the nation as a whole. A right approach to define your field and provide evidence for your achievements is the key in a successful NIW petition.

As an applicant, you should evaluate your situation as to the NIW option of immigration petition. You may first update your resume and then consider whether the NIW category is applicable to your situation. If not, you may consider other immigration classifications, which may be best for you, such as EB1-Extraordinary Ability (EB1A), EB1-Outstanding Researcher or Professor (EB1B), or even Labor Certification.

After you choose the National Interest Waiver classification, you need:

- 1) effectively communicate with your current employer and/or previous employer to obtain any help for document/evidence collection for your achievements in a field;
- 2) carefully examine the sample recommendation letters provided in this package, which can be used as a reference for the initial draft of the letters of recommendation (or reference letters) for your petition;
- 3) review and edit your draft letters of recommendation to ensure that they include the appropriate language and meet the NIW requirements;
- 4) collect all the documents and evidence needed for your NIW petition;
- 5) organize all the required documentation for your NIW petition, including the signed reference letters;
- 6) draft a petition cover letter based on the sample cover letter included in this package, which explains in detail how you may qualify as an Alien of Exceptional Ability, and you may serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications, and the national interest would be adversely affected if you are required for a Labor Certification;
- 7) fill and sign the Form I-140, and submit the completed petition materials to a proper USCIS Service Center, with the required application fee;
- 8) contact the USCIS for the status inquiry of your pending case;
- 9) if the USCIS makes a request for additional evidence on your pending case, you should respond and submit the additional documentation required for your case to the USCIS in time.

3. Self-Evaluation Questions as a Guidance to increase your EB-2 NIW Petition Approval Chance

To decide if you qualify for the National Interest Waiver immigration category, the following

questions will help you determine and increase your chance of approval. Even though this is not an exact checklist of the qualification criteria, if you can answer five or six of the questions in an affirmative way, then you have a chance of making a case for NIW petition. The exact outcome of your case will depend on how well you present it, among other things.

To find out your chance of applying for U.S. permanent residence under the NIW category, simply answer these questions and give a brief description of your work. Try to emphasize the significance of your work.

- 1) What is your specialty? How many years of experience do you have?
- 2) Do you have an advanced degree (Masters or PhD)? Can you argue that you are an established researcher or an expert in your field based on your professional experience? (List your academic degrees and area of your specialization, as well as the dates attended)
- 3) What have you already accomplished in the field? What consequences would occur if you were unable to begin or continue your participation in the activity?
- 4) How would your participation in the program/activity have a greater impact than others in the field?
- 5) How your work has been recognized as significant by peers, governmental entities, professional, or business organizations?
- 6) What will be the overall effect of this work to U.S. economy and government? Does your work improve the health care, education, housing, or environment of the United States?
- 7) What in your work will substantially benefit the U.S. in a significantly higher degree than others in your field? Is your work requested by any government agency? (For example: NIH, VA, NSF, Army, Navy, NASA, DOE, DOT, DOD, etc.)
- 8) Are you considered to be an expert or above the ordinarily encountered in the field? What distinguished your work from that of others with the same training and background?
- 9) Do you have papers published in journals that are distributed nationally or internationally? How many citations of your published papers are in SCI, EI or other major science and engineering indexes? Have you wrote or published any academic book or book chapter in your field?
- 10) Do you have critical position in the field? Do you hold a position, which is critical for the operation of a company, and are you responsible for work of others?
- 11) What is the potential application of your current research? What specific problem is addressed by your research? What do you hope to discover or achieve in your current research?
- 12) What have you discovered, and what progress have you made so far? Why is your work significant?
- 13) Do you have any professional membership? Are you affiliated with any academic societies or associations? Are you at a middle or senior level? Are you a member of an academic organization or society for which the membership criterion is not just by application, but also by nomination or election?
- 14) Have you received any request for reprints of your published papers? Do you have

any proof or evidence to indicate the significance of your work? Have your research results been reported by the professional media or any other news media or agencies?

15) Have you ever won any academic prize, awards or honors that are above the average level? For example, have you ever won the national, state, or conference awards?

16) Do you have any patent or patent application? Do you have approved or pending patents?

17) Have you reviewed academic papers for professional journals? Have you been invited to judge, review or comment on other peer's research work? For example, have you acted as a referee in a professional conference?

18) Can you list 3-5 professors, academic experts or public officers who can write reference letters for you?

If some of the questions seem not applicable to your situation, just do the best you can to describe your work? Don't be shy or modest, you need to be aggressive to be successful in your petition. If you can answer some of the questions successfully, you may qualify for applying for U.S. permanent residence under the National Interest Waiver category.

Chapter Three

Collecting Evidence to Meet Qualification Criteria, and The Proved Petition Strategies and Tips

1. The Qualification Criteria and Evidence Collection

(1) The Qualification Criteria for Exceptional Ability and Advanced degree

An alien applicant may qualify for EB2 NIW preference classification if:

- i) The alien applicant has exceptional ability in the sciences, engineering, arts, or business;
- ii) The alien applicant is a member of the professions holding advanced degree;
- iii) The alien applicant will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and
- iv) The alien's services are sought by an employer and in the United States National Interest.

According to USCIS, the term "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." This standard is lower than that for EB1 Aliens of Extraordinary Ability.

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. An alien can satisfy the advanced degree requirement by holding any of the following:

- v) A U.S. master's degree or higher, or a foreign degree evaluated to be the equivalent of a U.S. master's degree or higher; or
- vi) A U.S. bachelor's degree, or a foreign degree evaluated to be the equivalent of a U.S. bachelor's degree, plus five years of progressive, post-degree work experience. An alien who does not possess at least a bachelor's degree or a foreign equivalent degree will be ineligible for this classification.

(2) The Qualification Criteria for a Physician through National Interest Waiver (NIW)

The Physician must agree to work full-time in a clinical practice. For most physician NIW cases, the required period of service is 5 years.

The Physician must work in a primary care (such as a general practitioner, family practice petitioner, general internist, pediatrician, obstetrician/gynecologist, or psychiatrist) or be a specialty physician.

The Physician must serve either in a Health Professional Shortage Area (HPSA), Mental Health Professional Area (MHPSA – for psychiatrists only), a Medically Underserved Area (MUA), or a Veterans Affairs facility, or for specialists in a Physician Scarcity Area (PSA).

The Physician must obtain a statement from a federal agency or a state department of health that has knowledge of your qualifications as a physician and that states your work is in the public interest (This statement is known as an attestation.

(3) The Evidence Collection for a National Interest Waiver Petition

The NIW petition must be accompanied by documentation showing that the alien is a professional holding an advanced degree and an alien of exceptional ability in the sciences, engineering, arts, or business. To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

- i) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- ii) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

To show that the alien is an alien of exceptional ability in the sciences, engineering, arts, or business, the petition must be accompanied by the following:

- v) An official academic record showing that the alien 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;
- vi) Evidence in the form of letter from current or former employer showing that the alien has experience in the occupation for which he or she is being sought;
- vii) A license to practice the profession or certification for a particular profession or occupation;
- viii) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- ix) Evidence of membership in professional associations; or
- x) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The USCIS will exempt the requirement of a job offer, and thus of a Labor Certification, for aliens of exceptional ability in the sciences, engineering, arts, or business if exemption would be in the U.S. National Interest. To apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the U.S. National Interest.

Also, technically meeting the initial evidence requirement does not guarantee that the alien will be found to be an alien of exceptional ability. Satisfying the above criteria does not guarantee that the USCIS will grant your NIW classification as an alien of exceptional ability. The USCIS looks for quality as well as quantity. As in many other aspects of immigration law, comprehensive documentation of your qualifications is very important.

(4) Present Powerful Evidence in Sciences and Engineering Fields

For an alien applicant working in a science or engineering field, the alien's

achievement should be recognized in the field of expertise. It is a good starting point to think of it in the following ways:

- i) Generally, the alien applicant should have a number of publications in peer-reviewed journals, and have made contributions in a field;
- ii) There are several experts in the alien's field willing to testify that they believe the alien applicant has exceptional ability in the field of endeavor, and give specific reasons to support such a belief.

Also, consider the following additional questions for qualification and achievements:

- iii) Have you ever been invited as a reviewer, referee or judge by a peer-reviewed journal in your field to review papers to be published?
- iv) Are there occasions your work in your field was reported by media? Certain publications in a conference or editorial with your name identified as the primary researcher would be helpful also.
- v) Have you ever received a nationally or internationally recognized prize or award for professional excellence in your field?
- vi) Have you acquired membership in organizations in your field which requires outstanding achievements of its 1. Three Criteria Applied to All Evidence

2. Collect the required evidence effectively to prove Your Exceptional Ability and Benefits to U.S. National Interest

1) Three Criteria Applied to All Evidence

To establish that you are an exceptional alien whose permanent residence will be in the national interest of the United States, you must collect all of the necessary evidence to demonstrate that you are in a position that is in the U.S. national interest, and you are exceptional and you contribute to United States to a much greater degree than an average U.S. citizen counterpart.

Like in a court case, a NIW petition needs to present evidence. The relevance issue of evidence is that it should help to build an argument that you have the mandatory level of exceptional ability. Usually, the evidence must meet the following three criteria to be entered, and the tests should be applied to all evidence:

- i. The evidence must be 'Relevant'.

This means that the evidence must address a specific point, which explains how or why the alien applicant should be considered to have exceptional ability required by a NIW petition.

For instance, researchers usually present evidence of publications, but some also provide evidence of presentations. One might argue that such evidence is not presented well. The applicant might argue that a presentation is a technique for communicating one's findings to others in the field. This is the objective of a research publication as well, so the relevance should be demonstrated easily.

ii. The evidence must be 'Competent'

This means that the evidence provided must be convincing. For example, if an applicant provides evidence of presentation at an international conference, he or she can submit letters from the conference organizers confirming that a paper has been accepted, including copies of printed abstracts, conference programs, or other documents, which come from the conference. Thus, this is a strong evidence that there really was a presentation.

If however, one has kept little evidence of his or her presentation, it is not reasonable to believe a conference program as the only evidence of presentation, in which the applicant's name is not mentioned in any way.

iii. The evidence must be 'Material'

This means that the evidence must be significant. For example, if a researcher has presented a brief report to the staff members at his or her laboratory on a monthly basis, this is not really the type of evidence that the USCIS is seeking.

For most applicants, the presentations should be at national or international conferences, and other related information should also be provided to USCIS. To meet the evidence requirement of being significant, the applicant may also explain each type of the following evidence:

- a. The paper selection process and peer-reviewing;
- b. The publishing proceedings;
- c. The attendance at the conference;
- d. The organizer of the conference.

By explaining how each type of evidence within a category is important, the applicant can pass this final test. The above tests should be applied to all evidence. The one underlying issue in terms of relevance is whether the evidence helps to build an argument that you have the requisite level of ability.

2) How to Effectively Collect Your Evidence to Prove Your Exceptional Ability and Its Benefits to U.S. National Interest

To explain that your position and your work is in the national interest of the United States, you need to collect and use all the related evidence such as your achievements, published papers, government documents, public media, and internet website that will help you to establish how your work is related to and contribute to U.S. national interest. Therefore, you should collect the documents in the following area for your NIW petition:

- i) Receipt of prizes or awards in an academic field. This includes copies of awards you have received as well as copies of application materials, which indicate the criteria used for the awards. While it is very hard to obtain a major prize or to prove the prize you received is major, any minor prizes or awards would contribute to your "Exceptional Ability". Some conferences or magazines often issue such prizes as "Best Paper Award."

Also, for this category, if you have a copy of an award letter or a copy of a certificate,

that would be helpful. If you have participated in research under a grant, you might want to include a copy of a grant award letter. In a letter of support, a person might mention how your work was instrumental in obtaining the grant. Generally, any copies of prizes and certificates will help the petition, and these prizes and awards should be quoted in the petition cover letter.

ii) Membership in academic associations. Copies of membership cards are helpful. If you can obtain some printed material about the organization, such as membership criteria, that could also be useful. You can simply go to the organization's web site and download a few pages of information, which can be used, in your petition. Another good tactic for this criterion is to have one or more of the letters of support reference the prestige or high standards of a specific association, or make some reference to the fact that your membership in a particular association is a good indication of the outstanding nature of your work. You may also include letters from an official within an association, congratulating you on the conferred membership.

While most associations only require a membership fee to qualify, some associations do have a member election process, which requires certain qualifications. Certificates or evidence of memberships in professional societies as well as evidence of what criteria were used in selecting members should be included. Some professional societies such as Sigma Xi select their members through nomination procedures and are based upon recognition of achievement in a field. There are some examples of membership not considered to be achievement by USCIS, including ACS, AICHE, ASME, ASEE, etc.

iii) Published material in professional publications or news media. This includes articles written by others about your work in an academic field, such as papers published by other people citing your name or work, and other people's Master's thesis or PhD dissertation citing papers with your name. This also includes any general literature discussing your present work and any literature discussing the present projects upon which you are working. You can also do a computer on-line citation search to see if any paper cites your published work. Most university's libraries are capable of doing this kind of search.

iv) Citation by other researchers. If possible, a printout of a citation check from a Science Index, or some other type of citation check is helpful. Depending upon the number of citations, it can also be helpful to include a letter from someone who is not necessarily familiar with your work, explaining the significance of being cited by others. You can also submit actual samples of articles by other researchers including citations to your work.

v) Participation on a panel or individually. If you have reviewed papers for a magazine or a conference, or worked as a judge of the work of others in the same or an allied academic field, you can collect this kind of evidence. You may need to submit the document of your review. You can also ask the magazine editor or the conference organizer to write a letter for you indicating you have done the reviewing, or include copies of letters from journal editors requesting you review a paper.

A support letter that references the fact that you served on a panel for Ph.D candidates can also be useful. Anything will help, if it will show you participating in review

activities where you are judging the work or performance of others.

vi) Scientific or scholarly research contributions to the academic field. This includes all kinds of research activities in the form of publications, presentations, inventions, patents, etc. Therefore, you would include copies of anything that would show your participation in professional conferences, like copies of agendas, abstracts, and fliers. This also depends heavily on the letters of support, where the letter writer references your work, offering statement about the importance of the research or teaching activity, its novelty, how your particular expertise makes such work possible and more effective. If you are involved in grant activities, you would also use that information in this criterion as well as in the "prizes/awards" criterion, depending upon the type of documentation and verification, so any letters or other documents dealing with grants would be useful. You can also include copies of publications and theses; just the cover page and second page are enough in some cases.

vii) Authorship of scholarly books or articles. The articles should be published in scholarly journals with national or international circulation and in an academic field. Chapters in books with ISBN numbers are counted. Thus, you would want to include copies of journal submissions, book chapters, etc. If there are numerous publications, you may include copies of the first 1-2 pages of a good sampling of the articles. If there are not a great number of publications listed on your CV, it is a good idea to include a full copy of each of the articles.

Copies of letters from journal editors informing you that a submission has been accepted would also be helpful, and anything else along those lines. When you start putting the petition documents together, you would also want to include copies of support letters to emphasize that your work is published in journals, which is an indication of your outstanding contributions.

viii) Reference letters from your degree advisors. The reference letters should strongly argue that you are excellent and have exceptional ability. The reference letter from your former advisor would be ideal if he or she appraises your previous work as well as comments on the importance of your current work.

ix) Reference letters from other professionals. These professionals include your college professors, your colleagues with certain qualifications, and your supervisors. Usually, if you tell them that the reference letters are for immigration purposes, you will get good words. You should ask all your reference writers to address the letter to USCIS, and send the letter to you opened.

x) Comments on your published papers from your peer-reviewers. These are also very important evidence. Even though most of those comments might be critics of details of your paper, one sentence that says, "the paper has original contribution to the research, I recommend it be published" is at least there. Otherwise, your paper cannot be published.

xi) All the postcards or emails that request your published papers.

xii) Letters or emails from your employer or co-researchers, which comments on your research importance and your excellent performance in the research project.

xiii) Your employer's research proposals, which mention the research importance, project applications, and project funding resources from any federal government,

federal agency, state government, or private company. These evidences can be used to prove that your research is important. Naturally, if you were working on a federal funded research project, a copy of the proposal to the funding agency, such as NIH, NSF, DOD, DOE, EPA, USDA, DOT, etc., would be easy to prove your work is important and you are outstanding.

xiv) Research reports or project progress reports. Even if these reports are not published yet, or if they will never be published due to confidential reasons, these evidences will also help you prove that you have exceptional ability and your research is important.

xv) Papers presented in academic conference. Copies of symposia and conference agenda, which indicate that you were a participant, whether as a research paper presenter or peer reviewer of other individuals' work. Even if a paper is not officially published in some cases, it will still help your petition.

xvi) Any evidences from your clients, research sponsors, official publications, which can be used to prove that your research results may be used by other companies or government agencies.

The USCIS adjudicators who examine the NIW applications are unlikely to be of the same academic caliber and educational level as the petitioning alien. In fact, USCIS has indicated that the examiners of these particular applications are only bachelor's degree holders, many of them in non-scientific areas. Consequently, it is necessary to present the evidence in a way, which is easily understandable for these examiners.

3. The Proved Strategies and How to Use Them to Your Advantage for a Successful National Interest Waiver Petition

1) Always Try to Link Your Case to the Seven Factors Suggested by USCIS

A person qualifies for NIW if he or she holds an advanced degree and is considered possessing exceptional ability in the sciences, engineering, business or arts. While the USCIS has not established specific criteria for approving NIW petitions, the USCIS Administrative Appeals Office (AAO) suggested that the following seven factors could be taken into consideration:

- i) Improving the U.S. economy;
- ii) Improving wages and working conditions of U.S. workers;
- iii) Improving education and training programs for U.S. children and under-qualified workers;
- iv) Improving health care;
- v) Providing more affordable housing for young and/or older, poorer U.S. residents;
- vi) Improving the environment of the U.S. and making more productive use of natural resources;
- vii) A request from an interested U.S. government agency or improving international cultural understanding.

Although they are not exhaustive, it is always wise to try to link a case to these factors. If there is a good fit with the standards, be sure to emphasize it. If an USCIS adjudicator can relate to and appreciate the importance of the alien's work, the petition is more likely to be

approved.

2) Be Sure to Meet the Three-Prong Test for NIW Eligibility of the NYSDOT Case

The National Interest Waiver provisions of the EB2 immigrant visa are intended to be difficult to prove. This visa classification is reserved specifically for foreign nationals who exhibit exceptional ability and U.S. national interest in their field of endeavor. However, recent RFE decisions by the U.S. Citizenship and Immigration Services (USCIS) indicate that the exceptional ability and national interest requirements for the EB2-National Interest Waiver classification are being interpreted even more strictly.

These standards include several criteria that must be met by any applicant applying for a National Interest Waiver. These requirements are called Three-Prong Test for NIW eligibility:

- a. It must be shown that the alien seeks employment in an area of substantial intrinsic merit.
- b. It must be shown that the proposed benefit will be national in scope.
- c. It must be persuasively demonstrated that the national interest would be adversely affected if a labor certification were required for the alien, and the alien applicant should serve the U.S. national interest substantially greater than the other equally qualified U.S. workers.

The first request asks for practical application of the area of expertise of the applicant. The second requires that applicant must demonstrate that he/she can serve the nation as a whole rather than a local area. The biggest problem lies with the third request, which asks the applicant to establish why he or she should not go through the traditional Labor Certification process. This requirement directly contradicts congressional intent when Congress passed the section of the law on national interest. Nevertheless, meeting these standards is crucial to a successful NIW petition.

The USCIS has made it clear that for an alien applicant to show exceptional ability and U.S. national interest in the field of endeavor, merely meeting the basic requirements of NIW petition may not be enough to ensure an NIW approval. The alien applicant must prove himself or herself to be "employed in an area of substantial intrinsic merit" and "the employment should be national in scope." Also, comprehensive documentation must be provided to substantiate acclaims to the exceptional ability. USCIS is very careful about the forms and sources of documentation, and the extent to which it establishes that the alien applicant can meet the Three-Prong Test for NIW eligibility.

3) Since the Labor Certification also Serves the U.S. National Interest, the Alien Applicant Must Show How to Serve the National Interest to a Substantially Greater Degree

EB-2 makes visa numbers available to persons of exceptional ability and to members of the professions with advanced degrees. To qualify in this category, applicants normally must have a job offer from a U.S. employer who needs their exceptional ability or professional skills. In turn, the employer then has to get a certification from the Department of Labor (DOL) that qualified U.S. workers are unavailable for the job. But the USCIS can waive the job offer, and therefore the labor certification, on grounds of national interest.

With a growing sense that the national interest waiver had become too big an umbrella for

a limited exception, the USCIS published a precedent decision, Matter of N.Y. State Department of Transportation (NYSDOT). For the first time, translated "national interest" into a set of conceptual guidelines. One of the 3 tests is specific to the immigrant, and introduces a novel concept:

"The labor certification process exists because protecting the job opportunities of U.S. workers having the same objective qualifications as an alien seeking employment is in the national interest. An alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest in the labor certification process."

For this test, NYSDOT's request for a waiver failed. Although agreeing that the state's engineer was eminent and played a significant role in maintaining New York's highways, the USCIS effectively held that the alien applicant was not influential enough in his field to benefit the national interest. For example, USCIS points out that he trained in a certain new technological method, which he did not design it. The Administrative Appeals Office (AAO) decision carefully notes that while innovation may be a significant factor, it is not always enough.

In NYSDOT's discussion of the third test for the national interest waiver, the AAO dismissed the claim that this Civil Engineer was needed to ameliorate a critical labor shortage, in view of the availability of the labor certification process to test and accommodate that very claim.

USCIS recognized that the labor certification process is an imperfect measure. The regulations of the Department of Labor only permit the certification application to test whether there are U.S. workers who have the basic qualifications for the job. The availability of a single U.S. worker who meets the minimum job requirements will defeat the labor certification and thereby deprive the potential employer of the immigrant's services, no matter how outstanding that immigrant may be.

In reconciling these points, the NYSDOT decision would permit the waiver only if the petitioner establishes that "the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications."

NYSDOT goes beyond the comparative standard, however, by stating that the benefit to an immigrant's endeavor "must greatly exceed the achievements and significant contributions" that an immigrant needs to establish "exceptional ability." It imposes this standard whether the immigrant seeks to qualify on the basis of exceptional ability or simply an advanced degree.

4) Evaluate Your Case Carefully, and Persuasive Arguments Need to be Presented

The NIW category is meant to be restrictive. Not everyone has exceptional ability. The USCIS has been restrictive in its interpretation of the NIW regulations. Well-crafted advocacy, however, can defend an NIW petition. More is not necessarily better. Sometimes petitioners submit mountains of documents arbitrarily, but busy USCIS adjudicators can be overwhelmed and annoyed by unnecessary bulk.

Therefore, you should evaluate your case carefully. You may want to discuss the standard with your employer or friends, and if possible, with your supervisor or mentor, to

evaluate whether the National Interest Waiver classification applies and whether the necessary evidence can be gathered. Detailed initial intakes will help manage expectations, avoid delays due to Request For Evidence (RFE), and reduce the chance of a denial. Careful analysis not only weeds out weak case, but also may help identify your accomplishments.

Since the USCIS has not created checklists, the examiner must be persuaded that your case has merit. If the argument is too long and boring, the examiner will lose interest before understanding the merits of the case. If the argument is too short and unconvincing, the examiner will not be persuaded. A successful case strikes the right balance between sufficient detail and argument to establish eligibility, without unnecessary repetition or the inclusion of irrelevant facts or arguments. More than any other types of cases, this kind of petition is won or lost on the strength of the arguments presented. You need to explain how you have performed well beyond what is normally required of others in your position.

5) Be Selective and Include Strong Evidence

In an attempt to crack down on what it perceives as abuse of the NIW category, in addition to the list of seven factors deemed to be in the national interest of the U.S., the USCIS proposed the following conditions to the regulations for NIW:

- i) There is a genuine need for the skills/experience of the alien. In other words, the alien is not being hired to merely overcome labor shortage in a particular under-served geographical area, which is viewed by the USCIS as benefiting a smaller section of society.
- ii) The alien will play a leading or critical role in the activity/event intended to benefit the U.S.
- iii) The prospective benefit to the U.S. on account of the alien's work must be substantial.

It is advisable for applicants to include satisfactory evidence demonstrating that they meet these conditions.

Also, as a practical matter, include only the first two pages of each journal publication, and the first few pages of each reference letter writer's CV. For example, each publication and each CV could be 10 pages long, which can make the package quite unwieldy. USCIS examiners are not impressed by the volume of material submitted; in fact, an examiner might be more likely to set aside a particularly large submission in favor of a shorter one. Be selective and include only strong evidence. Do not "pad" the petition with documentation that does not clearly make your point.

6) If It Is Possible, File Your Petition with a Specific Job Offer Which Clearly Describes the Work that Will be Done

Technically, a job offer is not required for a NIW petition. For this reason, it is possible for intending immigrants to self-petition. The way the law is drafted, it is the job offer that is waived. Because the job offer is waived, the individual Labor Certification requirement is also waived. Realistically, however, a person seeking a NIW must offer persuasive evidence that he or she will be engaged in work that will benefit the national interest of the United States. The easiest way to do this is with a specific job offer, which clearly describes the work that will be done.

As stated in USCIS regulations, "No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification." However, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letters from prospective employers, evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

Even though USCIS may waive the requirement for you to have current employment, which does not mean that a job is not important. In fact, you should always state in your petition any kind of relevant job that you currently have, and indicate that your future goal is to dedicate your exceptional ability to the benefits of this country. Having a job guarantees that you are capable of supporting yourself, and that you are using the exceptional capabilities that you are claiming in your application.

7) Discuss the Economic Benefits of Your Work

You may need to discuss the economic benefits of your work, if applicable. For medical researchers, economic statistics can be discussed together with human suffering from conditions, which you study. Also, you may want to stress the social importance of your work. For example, experience has shown that if an applicant's work may be tied to some medical breakthrough or a significant national social or political benefit, the National Interest Waiver petition was more likely to be granted.

Above all, remember that the USCIS examiners are human beings, so there is some information, which will have a stronger psychological impact than other information. Trial lawyers talk about "jury psychology", and here you can think the "examiner psychology." Make the examiners realize that your work is important and that they can feel good about approving your case.

8) If It Is Possible, Seeking a Recommendation Letter From a Ranked Governmental Official

If it is possible, you should seek recommendation letters from ranked governmental officials. A ranked governmental official is the best person to write a recommendation letter for you, because this kind of letter would imply that his/her agency would be benefited from your work directly or indirectly. However, it is hard for a person to write a good recommendation letter for you if he or she doesn't know you or your work.

When collecting evidence, recommendation letter (or reference letters) submitted by other experts in the field should be carefully screened for statement and implication. The letters should clearly support the specific claimed criterion. The petitioner should work with people writing the reference letters, and review the letters before they are finalized, and ask the writers to revise the letters if necessary.

9) This is the Wrong Time to be Humble about Yourself

Keep in mind that you are making a case, which sets you apart from the rest of your peers. Therefore, the evidence that you present with your application should clearly set you apart from others in your field. You should always present the strongest case possible. This is the wrong time to be humble about your achievements. The USCIS adjudicating officer will be looking for exceptional ability, which sets you apart from

your peers, so you should clearly say that your abilities are above the average.

Therefore, you should not use humble words. For example, if your job responsibilities could be that of a "Visiting Scholar", or a "Research Scholar", or a "Research Scientist", or "Lab Technician", do not claim to be the "Lab Technician". The "Research Scientist" or "Research Scholar" sounds much better. Also, a "Lab Technician" or "Teaching Assistant" is very hard to claim to have "Exceptional Ability"; think of other names, which give you a better title, but at the same time does not distort the nature of your job. Please keep in mind that giving incorrect evidence may seriously harm your application, and can be detrimental to any of your future applications too.

4. The Significant and Useful Tips for an Effective National Interest Waiver Petition

1) The Applicant's Employment Should be in an Area of Substantial Intrinsic Merit

In requesting for a national interest waiver, the applicant should show that he or she seeks employment in an area of substantial intrinsic merit. The applicants' employment must be important to the national interests of the United States, and the benefits of the applicant's employment should be immediately apparent to the national interests of the United States.

The evidence provided should establish that the work done by the applicant is significant and in U.S. national interest. The applicant's work or research should possess substantial intrinsic merit of national benefits, and the evidence should demonstrate his or her unique and essential contributions.

2) The Applicant's Employment Should be National in Scope

In the NIW petition, the applicant should provide evidence to show that the benefits of the applicant's employment will be national in scope. The applicant's employment may be limited to a particular geographic area, but the applicant must establish benefit to more than a particular region of the country. Moreover, there should be little or no adverse impact on the interests of other regions of the country.

The applicant's work should offer significant national benefits. A petition cannot rely on speculative future benefits, and a research that may lead to results that benefit the national interest are not sufficient to warrant a grant of a NIW.

For the submitted reference letters, it is not enough to only stress the general importance of the applicant's work or research. The national importance of one's field of study does not establish the importance of one's work in particular.

3) The Applicant Should Demonstrate that the National Interest Would be Adversely Affected if a Labor Certification Were Required for the Alien

One NIW petition threshold in the NYSDOT case's Three-Prong Test is

That it must be persuasively demonstrated that the national interest would be adversely affected if a labor certification were required for the alien. The applicant should demonstrate that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the petitioner, by making available U.S. workers to the position sought by the applicant.

In the petition, the applicant should submit evidence to persuasively establish that the national interest would be adversely affected if employer were required to obtain labor

certification from the U.S. Department of Labor, and a U.S. worker with the same minimum qualification should not be able to perform the same duties and serve the national interest to a similar degree.

4) The Applicant Should Serve the U.S. National Interest Substantially Greater than the Other Equally Qualified U.S. Workers

The applicant should establish that he or she would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. It is not sufficient for the applicant simply to enumerate his or her qualification, since the labor certification process might reveal that an available U.S. worker has the qualification as well.

The applicant should explain how he or she would serve the national interest to a substantially greater degree than other individuals in the field. Emphasis should be placed on the overall value and potential of the applicant's individual contribution to the U.S., not the fact that he or she is working in a field of high national interest.

An applicant's record needs to provide sufficient evidence that the work of the applicant has created national benefits beyond that which could have been made by a fully qualified U.S. worker, and the clear evidence of the applicant's individual contributions to national implications is required.

For NIW petition, an applicant must show that his or her accomplishments could not be achieved by an equally qualified U.S. worker, but the applicant does not need to demonstrate how his or her abilities exceed those of every other researcher in the field.

5) Testimony from Independent Experts

The USCIS examiner's determination relied heavily on the testimony of witnesses with varying degrees of connection to the applicant. The letters of support from the expert witnesses who has indirect connection with applicant are considered favorably, and the letters of support need to prove that the impact of the applicant's work stretched well beyond the circle of colleagues who had worked with the alien directly.

The testimony from independent established experts who knew the applicant mostly from his or her published work may demonstrate that the applicant has significant national or international attention.

6) It Is Best to Provide not only Scholarly Articles, but also Include the Citations by Others - A Citation Search Report

The USCIS regularly held that unless there is evidence that independent researchers have cited an applicant's work, the authorship of scholarly articles is not enough to show the applicant's exceptional ability. To satisfy this consideration, it is best to provide evidence of the authorship of scholarly articles, the citation of the articles by other scholars, and the merit of the publishing journals themselves.

If you mention your accomplishment in petition, USCIS adjudicator may not believe you. So you need a Citation Search Report as one of your evidence, and you may provide impact factor for the journals where you published papers. In one NIW case, the alien applicant has 6 publications that were never cited. The USCIS' respond is: "no citations means no recognition of

your work." This sounds reasonable.

For NIW petitions, letters of recommendation are important but not sufficient. You must provide convincing evidences, and you can overcome the requirements by demonstrating the importance of your research, journal papers, citations, patents, etc. You can also ask the referees to write letters stating that you are indeed recognized in your field.

For citation search tools, the Google Scholar, Scopus, SciFinder, and ISI Web of Science provide more citation search results. Also, if you have reviewed papers, you may have access to Scopus.

7) Be Sure to Emphasize the Innovative Side of Your Work

The key issue for a National Interest Waiver petition is how to collect evidence to prove your work is in U.S. National Interest. Your work can be teaching or management, and it does not have to be research. It is a common understanding, however, that scientific research and technology development keeps this country's economy strong. So, be sure to emphasize the innovative side of your work.

8) Need to Explain the Awards, Prizes, Grants and Fellowships

Do not just attach evidence of awards, prizes, grants and fellowships. Your need to set forth the criteria for the award and explain how the awards were in fact based upon your past achievements. Award of NIH grants, for example, are based on the review committee's evaluation of not only the proposed project, but also the individuals on the research team.

9) State the Ways in Judge of Others' Work

To successfully to prove your judging of others' work, you should, if possible, submit a letter from the editor of the journal that you have reviewed for, stating that you were chosen as a peer reviewer based on your expertise in the subject matter. Also, you may want to state how the ways in which you have acted as a judge of others' work is qualitatively different from others asked to serve as judges. For example, you can stress that you were specifically appointed by a chairman of the department to serve on a panel reviewing candidates for a faculty position.

10) If You Do not Have a Few Good Reference Letters

If you do not have a few good reference letters, you may consider other methods of showing that experts in your field have recognized your work. For example, go into more detail about the journals, which published your articles, perhaps with a thorough discussion of the peer review process with notes about the types of experts chosen as manuscript reviewers. Also talk at length about the actual or potential benefits of your work. Show statistics, which paint a clear picture of the importance of your work.

11) If You Do not Have Many Publications

If you want to apply for Green Card under NIW category, but do not have many publications, it is not a problem. Having many publications are nice, but not necessary for NIW. In fact, there are many applicants who do not have many publications, but have rather strong reference letters and have got their cases approved. Remember, always try to emphasize the significance of your work and your exceptional performance; do not be

discouraged about fewer publications.

12) Quote the Regulations Directly to Spell out the Law

To help ensure that your case will not be wrongfully denied by inexperienced USCIS examiners, when writing the petition cover letter and/or reference letters, you should quote the regulations directly to spell out the law for a potentially less-than-informed adjudicator. That way the examiner should not be confused about language or requirements, and it will lead to accurate adjudications for the first try.

13) Prevailing Wage Is not an Issue for the NIW Petition

Since the U.S. Department of Labor is not involved, the "prevailing wage" is not an issue. Obviously, if the salary offered is high, then the overall package will look better; if the salary offered is low, the applicant will have to explain why he or she is earning substantially less than that of his or her peers. If the answer is that the applicant is engaged in research at an institution where similarly employed researchers are paid similar salaries, then this should not be a problem. Also, if the applicant is working for a non-profit institution, this may explain a low salary. The USCIS will expect a person working for a for-profit entity to earn a salary that is equal to or higher than that paid to similarly qualified professionals working for similar companies.

14) A PhD Degree Is Not Required for NIW Petition

If you do not have a PhD degree, it is not a problem. A PhD degree is not required for NIW petition. With regard to National Interest Waiver, the law only demands an advanced degree or bachelor's degree plus five years of work experience as the basic qualification. The difficult part is to show your work benefits this country. Actually, many NIW applicants have master's degree, not PhD degree. Therefore, Ph.D. candidates can apply under NIW.

15) It Is Important to Determine the Appropriate Time to Petition for NIW Classification

The USCIS may reject post-filing submissions of evidence. Petitioners must possess the necessary qualifications at the time of the original (or initial) petition. In some cases, if a petitioner can wait until after his/her important article published, his/her case may be stronger.

16) For the Field of Endeavor

It is important to strategically think about and identify the field of endeavor in which the petitioner is seeking exceptional ability and National Interest. Although the rule is to have the narrowest field possible (i.e. high energy elementary matter physicist vs. physicist), the USCIS might reject such a narrow categorization, and dismiss any evidence submitted in support of exceptional ability outside the narrow category.

17) Avoid Statements that There Is a Shortage of U.S. Workers in Your Field

An area to avoid involves statements that there is a shortage of U.S. workers in your field. This will result in the USCIS examiner saying that you should definitely go through the Labor Certification process, not the NIW application.

18) The Personality or Hard-working Nature of the Beneficiary

The reference letter writers frequently find it is necessary to comment upon the personality or hard-working nature of the beneficiary. While such comments would be appropriate in other contexts, they are not relevant to the issue of the alien's exceptional ability. The alien's competency and expertise, as well as the significance of his/her work,

should be evaluated by reference to objective facts to the fullest extent possible.

19) A “Play for the Kickback” Strategy

Some applicants have reported that they follow a “play for the kickback” strategy of submitting a basic petition, holding back some evidence, and waiting for a Request For Evidence (RFE) from USCIS. It is not recommended to follow this practice, because of the problem of submitting documentation dated after the initial filing.

Chapter Four

NIW Case Studies and Analysis of USCIS Decisions

1. Case Study 1. Detailed Analysis and Petition Strategies for a Research to obtain a NIW Approval

1) The Alien Applicant's Work is very Important to People's Health in the United States

A nutrition researcher with expertise in the development of low-fat foods, obtained an EB2 National Interest Waiver approval, based on his work at a Fortune 500 food and beverage company and a track record of achievement. While it is not immediately obvious that developing low-fat coffee beverages is in the national interest of the United States, the alien applicant developed a series of arguments that persuaded the USCIS Service Center to grant the NIW approval.

The researcher of the low-fat coffee beverage held two degrees: a Master degree in food science and a bachelor degree in chemical engineering. The national interest waiver petitioner argued that his work in developing low-fat foods is very important to the health of the nation and important to the provision of a variety of food choices.

Under this argument, the alien applicant presented information from the National Institutes of Health showing that obesity has been shown to either increase the risk for, or exacerbate such conditions as, hypertension, lipid disorders, diabetes, coronary heart disease, stroke, gallbladder disease, sleep apnea, respiratory problems, osteoarthritis, and certain types of cancers. He also showed that these and other obesity-related diseases cost nearly \$100 billion per year in United States. The alien applicant also showed that the government recently released new "Federal Obesity Clinical Guidelines," endorsed by major medical associations throughout the United States, to treat obesity.

In addition to the federal interest in low-fat foods, the alien applicant also showed that the U.S. consumer is interested in the further development of low-fat food choices. He presented a reference letter from the Calorie Control Council, an international association that represents the low-calorie and reduced-fat food and beverage industry. The letter attested to the national significance of lower fat foods. Furthermore, the letters of recommendation, including one from the president of a leading U.S. contract R&D organization that develops food products, attested to the fact that consumers' demand for reduced and low-fat food product development is strong.

2) The Nutrition Researcher's Work Will also Benefit the Economy of United States

Since the market for low-fat foods is growing, and his research has caused the emergence of a new market segment for cold-coffee beverages. The alien applicant also showed how new low-fat food products, derived from innovations in health and food-processing technologies, benefited the national economy. Such low-fat and reduced-fat products represented a significant market in the food industry in the United States. The nutrition researcher, through his past endeavors at a private research and development lab, and his current work at one of the largest U.S. beverage companies, played a critical role in developing such foods and thereby directly benefited the national economy.

The applicant included numerous magazine and newspaper articles about one of the products he played a role in developing. These articles showed that the industry was a multi-million dollar per year industry in United States, and that this new product was credited with opening up an entirely new market share. These articles came from Supermarket News, The Hartford Courant, and Food Processing Magazine.

He even included a transcript of a Cable News Network (CNN) broadcast where a market analyst commented on the company's growth potential. One article called the product one of the top ten new products of the year it was introduced. It had over 80% of the market share in its segment, and was responsible for almost \$100 million in sales. Quite importantly, the product was hailed in its company's annual report as part of its growth strategy of investing in "big opportunities," and this company is a \$10 billion company.

The above two arguments, directly relating the development of this product to the nation's health concerns and the U.S. economy, satisfied the criteria that the foreign national's work was of "substantial intrinsic merit" and "national in scope." Since these products were distributed and marketed nationally, their impact was national. But the final standard, that the beneficiary's work will impact the national interest to a substantially greater degree than the work of his U.S. citizen colleagues, still had to be surmounted.

3) The Nutrition Researcher Will Impact the Field as a Whole to a Substantially Greater Degree than his U.S. Citizen Counterparts

The nutrition researcher will impact the field as a whole to a substantially greater degree than his U.S. citizen counterparts, thereby outweighing the interests in preserving the Labor Certification process in this case.

Here, the alien applicant showed that the beneficiary had a past record that justifies the future projections of benefit to the nation. The nutrition researcher in this case had a proven track record of developing successful low-fat products. He had developed ready-to-drink weight loss products for a leading diet supplement company, a low-fat ice cream for an ice cream maker, and a reduced-fat peanut butter spread for a food-service company. His most recent endeavor was the low-fat coffee drink product that had garnered huge success.

Also important to establishing the nutrition researcher's benefit to the field were letters of recommendation from academics, private research labs, and the Fortune 500 company. All concluded that this nutrition researcher had a special talent in developing and processing low-fat and reduced-fat foods. He also had recognizable expertise with numerous fat-replacement systems as well as heat preservation technologies, and shelf-life stability analyses.

4) Conclusion

The NIW approval is now difficult to obtain. While USCIS has changed direction in its adjudications, NIWs are still possible for individuals who play critical roles at their companies and have a proven track record of achievement, showing that they are significantly better in their field than their U.S. citizen counterparts.

The NYSDOT case will stop frivolous NIW cases from being filed. But truly deserving cases, such as engineers working on important technologies and medical professionals doing cutting-edge research, will still be able to obtain NIW approval

2. Case Study 2. Detailed Analysis of USCIS Decisions for New York State Department of Transportation's NIW Petition

1) NYSDOT - An Important Case on National Interest Waiver Petition

On August 7, 1998, the USCIS (then INS) issued a precedent decision raising the standard for applicants in this category. Since the passage of the Immigration Act of 1990 (IMMACT), the USCIS has been flexible in adjudicating NIW petitions. Each NIW case was decided on its own merits. There was no clear definition of what "national interest" was. According to the NYSDOT decision, an applicant must meet the following three tests:

- 1) Applicant's prospective employment must be in an area of "substantial intrinsic merit." However, the USCIS emphasized here that eligibility for the NIW "is not established solely by a showing that the beneficiary's field of endeavor has intrinsic merit."
- 2) The proposed benefit must be national in scope.
- 3) Petitioner must show that "the national interest would be adversely affected if a labor certification were required for the alien." That is, "the petitioner must demonstrate that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making available to U.S. workers the position sought by the alien."

Prior to articulating the above, the USCIS had suggested that the following 7 factors may be influential in determining whether an applicant's work was in the national interest:

- (1) Improving the U.S. economy;
- (2) Improving wages and/or working conditions of U.S. workers;
- (3) Improving education and training programs for U.S. children and/or under-qualified workers;
- (4) Improving health care in the U.S.;
- (5) Creating more affordable housing for low income residents of the U.S.;
- (6) Improving the environment and/or conserving natural resources; or
- (7) Working on behalf of a U.S. government agency

2) Background Issues and Summary Questions in Evaluating Whether One Qualifies for NIW

NIW has been very popular since its existence. It has been an option for those who qualify and do not wish to undergo the tedious and time-consuming process of Labor Certification. Perhaps it is because of the sheer volume of applications that were filed, the USCIS (then INS) decided to tighten up the liberal's standards that were previously in place.

This case involves the New York State Department of Transportation (NYSDOT) having employed a foreign national as a Civil Engineer in 1993. The foreign individual has a Master of Science degree in Civil Engineering from Iowa State University. His expertise, as articulated by the lawyer for NYSDOT, is in "pre-stressed concrete construction and design of post-tensioning and curved bridges." NYSDOT submitted an employment-based immigrant visa petition under the National Interest Waiver provision that was denied by the Vermont Service Center (VSC) in April 1998. This case was subsequently appealed. NYSDOT was unsuccessful in its appeal and the case was dismissed by the Administrative Appeals Unit of USCIS. This decision has a significant impact on future NIW filings.

The main issue in this case appears to be whether it would be in the "national interest" to exempt a foreign national from having a job offer and requiring the employer to undergo Labor Certification. The Administrative Appeals Unit in the NYSDOT case repeatedly emphasized on the Labor Certification itself being in the "national interest." Thus, "an alien seeking an exemption from the Labor Certification must present a national benefit so great as to outweigh the national interest inherent in the Labor Certification process."

The decision further stated that it is insufficient for the employer or the foreign national to show that there are no available U.S. workers to fill the position that has been offered. After all, it is

the very function of the Labor Certification process. i.e. to test the labor market. The summary questions in evaluating whether one qualifies for NIW include:

- 1) Is the alien's offered employment in the area of "substantial intrinsic merit?" i.e. are you going to work in a field of endeavor that has "intrinsic merit?" In the NYSDOT case, the USCIS concluded that earthquake engineering of bridges satisfies the test of "substantial intrinsic merits."
- 2) Is the proposed benefit national in scope? This is where the contradiction comes in. The Administrative Appeals Unit stated that the New York bridges and roads provided for interstate commerce, and therefore, serves the national interests of other areas in the country. However, the Administrative Appeals Unit indicated that the impact of professionals such as attorneys, school teachers or chefs are "so attenuated at the national level as to be negligible." This contradicts earlier opinion that were issued by the Administrative Appeals Unit which opined that small national interest is sufficient even if it indirectly benefited through regional or local action.
- 3) Will the national interest be adversely affected if a Labor Certification were required for the alien? This last evaluating standard concentrates on the alien. The Administrative Appeals Unit in the NYDOT case stated that the very purpose of the Labor Certification was to protect U.S. workers from being displaced by foreign workers. Therefore, one must convince the USCIS that national benefit of a Labor Certification exemption was "so great as to outweigh the national interest inherent in the labor certification process."

3) The Analysis of Three Prongs of the NYSDOT Tests for a NIW Petition

Under the first prong of the NYSDOT test, the alien must seek employment in an area that has substantial intrinsic merit. In NYSDOT, the alien was a structural engineer working on highway bridges. This activity was found to have substantial intrinsic merit. It is obvious that the protection of motorists and the maintenance of a highway system are activities of substantial intrinsic merit. By contrast, a person who is a juggler and asserts that he or she wishes to perform at children's birthday parties, might not meet this requirement. While the alien's proposed activity is not deleterious, it would be difficult to claim that such an activity has "substantial" intrinsic merit for purposes of establishing the "national" interest.

The second prong of the NYSDOT test requires that the waiver applicant demonstrate that the proposed benefit to be provided will be national in scope. There are many activities which have positive effects, such as job creation for a local community, but may in fact have a limited, or even negative, national impact. For example, an alien may be sought as a loan officer for a regional bank. The alien's clients may come from various parts of the country, but the primary purpose of the alien's employment is to benefit the regional bank, not to benefit the nation as a whole. The principal aim of the alien's activities is to benefit the bank, not the nation.

As another example, an alien may be sought to manage a waste disposal facility for a municipal government. That facility, however, may be contributing to pollution of a nearby river. While the alien's activities might result in the preservation of local jobs, his or her activities might in fact have a detrimental effect on other communities lying along the path of the stream or river, even those located in other states. Therefore, any interest in hiring this person would be local at best, and could not be deemed to be national in scope or in the "national" interest.

On a related note, the basis for the waiver may not be the existence of a local labor shortage. The mere fact that the alien might fill a locally needed position - irrespective of the positive effect of

such activity - does not qualify the activity as being in the national interest. While there exists a generalized national interest in providing jobs to all work authorized persons, the national interest waiver is a waiver of the labor certification requirement - it is not a substitute for this requirement. Congress specifically created the labor certification process in order to test the domestic local labor market.

A shortage of qualified workers in a given field does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Finally, under the third prong of the NYSDOT test, it must be demonstrated that the national interest would be adversely affected if the employer is required to proceed with the labor certification process. In order to satisfy the third component of the test, therefore, it must be shown "that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making the position sought available to U.S. workers."

In addition, NYSDOT further requires, as a condition of meeting the third prong, "that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications." This test recognizes that there can be two competing "national interests" - the national interest, as set forth by Congress in section 212(a) (5) of the INA, of requiring a test of the labor market versus the "national interest" in fulfilling a permanent need for the alien's services.

Given the variety of occupations potentially covered by the waiver, a single set of standards applicable to all cases is impractical. Therefore each determination must be made on a case-by-case basis and will depend on an assessment of the specific facts presented.

To meet the third prong, the petitioner might be able to demonstrate that the need for the alien's services is so great that the national interest would not be properly served were the petitioner required to postpone employment of the alien until the labor certification process is completed. An example would be the need for an alien epidemiologist to work on prevention of an epidemic following a natural disaster. Obviously, time would be of the utmost essence in such a case.

4) An Alien Applicant Must Have Demonstrable Achievements

It should be remembered that while the NYSDOT decision sets forth these three minimum criteria which must be met in order to establish eligibility for a national interest waiver, the presence of these factors, alone do not necessarily mean that USCIS will grant the NIW approval. In addition to the above, an alien applicant should also bear in mind the following general considerations with respect to adjudicating requests for national interest waivers:

- i) An alien seeking immigrant classification as an alien of exceptional ability or as a member of the professions holding an advanced degree cannot meet the threshold for a national interest waiver of the job offer requirement simply by establishing a certain level of training or education which could be articulated on an application for a Labor Certification.
- ii) General arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the U.S., cannot by themselves establish that an individual alien benefits the national interest, by virtue of engaging in the field, or seeking an as yet undiscovered solution to the problematic issue.

In all cases, while the national interest waiver hinges on prospective national benefit, it clearly

must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit if the alien has few or no demonstrable achievements.

The following is the exact language of the decision by the Administrative Appeals Unit that INS (now USCIS) has stated it will use as a standard while processing all NIW request pending before and after August 1, 1998.

3. Build Your Strong Case By Learning Lessons From USCIS Decision for NYSDOT's Petition

NEW YORK STATE DEPT OF TRANSPORTATION, Petitioner
In Visa Petition Proceedings
EAC 96 063 51031

Designated by the Acting Associate Commissioner, Programs,
August 7, 1998

(1) An alien seeking immigrant classification as an alien of exceptional ability or as a member of the professions holding an advanced degree cannot meet the threshold for a national interest waiver of the job offer requirement simply by establishing a certain level of training or education which could be articulated on an application for a labor certification.

(2) General arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field or seeking an as yet undiscovered solution to the problematic issue.

(3) A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

DISCUSSION

The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. o 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a civil engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available. . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their

exceptional ability in the sciences arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States. It appears from the record that the petitioner seeks to classify the beneficiary both as an advanced degree professional and as an alien of exceptional ability. The record establishes that the beneficiary holds a Master of Science degree in Civil Engineering (Structures) from Iowa State University and thus qualifies as a member of the professions holding an advanced degree. The issue of whether the beneficiary is also an alien of exceptional ability is moot. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55,1 O1 st Cong.,1 st Sess.,11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29,1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional.") The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Several factors must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. This beneficiary's field of endeavor, engineering of bridges, clearly satisfies this first threshold. The importance of bridges, and their proper maintenance, is immediately apparent. It must be stressed, however, that eligibility is not established solely by a showing that the beneficiary's field of endeavor has intrinsic merit. A petitioner cannot establish qualification for a national interest waiver based solely on the importance of the alien's occupation. It is the position of the Service to grant national interest waivers on a case by case basis, rather than to establish blanket waivers for entire fields of specialization.

Next, it must be shown that the proposed benefit will be national in scope. While the alien's employment may be limited to a particular geographic area, New York's bridges and roads connect the state to the national transportation system. The proper maintenance and operation of these bridges and roads therefore serve the interests of other regions of the country. Moreover, nothing in the record indicates that proper maintenance of New York's transportation infrastructure would have an adverse impact on the interests of other regions. We therefore conclude that the occupation in this case serves the national interest.

The final threshold is therefore specific to the alien. The petitioner seeking the waiver must

persuasively demonstrate that the national interest would be adversely affected if a labor certification were required for the alien. The petitioner must demonstrate that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making available to U.S. workers the position sought by the alien. The labor certification process exists because protecting the jobs and job opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. An alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process.

Stated another way, the petitioner, whether the U.S. employer or the alien, must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. It is not sufficient for the petitioner simply to enumerate the alien's qualifications, since the labor certification process might reveal that an available U.S. worker has the qualifications as well. Likewise, it cannot be argued that an alien qualifies for a national interest waiver simply by virtue of playing an important role in a given project, if such a role could be filled by a competent and available U.S. worker. The alien must clearly present a significant benefit to the field of endeavor.

With regard to the unavailability of qualified U.S. workers, the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages. Similarly, the Department of Labor allows a prospective U.S. employer to specify the minimum education, training, experience, and other special requirements needed to qualify for the position in question. Therefore, these qualifications, taken alone, do not justify a waiver of the certification process which takes these elements into account.

Because, by statute, "exceptional ability" is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to his or her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. o 204.5(k)(3)(F). Because the statute and regulations contain no provision allowing a lower national interest threshold for advanced degree professionals than for aliens of exceptional ability, this standard must apply whether the alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree.

The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner, the New York State Department of Transportation (NYSDOT), has employed the beneficiary since November 1993. The beneficiary's supervisor, Project Engineer Anil Desai, P.E., describes the function of the NYSDOT Structures Division as "the provision of professional engineering services for the rehabilitation, replacement, maintenance and inspection of bridges." Counsel states that the beneficiary's "expertise is in pre-stressed concrete construction and design of post-tensioning and of curved bridges."

A.M. Shirole, P.E., then Director of Structures and Deputy Chief Engineer at NYSDOT, stated in a November 3, 1995 letter that 60% of New York's bridges contain steel bearings which are

susceptible to earthquake damage. The beneficiary "has been involved in detailed seismic analysis using state-of the-art seismic analysis software." Mr. Shirole observes that recent earthquakes have demonstrated "the need for careful implementation of new guidelines for improving the seismic resistance of bridges." The petitioner has submitted evidence showing that the State of New York has withstood four earthquakes at or above 5.0 on the Richter scale since 1884, as well as numerous smaller earthquakes.

The beneficiary also analyzes and designs curved bridges, which "can provide 10 to 15% economy over a conventional system comprising of straight girders." Mr. Shirole asserted "I am personally aware of the national shortage of the type of expertise [the beneficiary] possesses in the design of curved girder bridges." Knowledge of specialized design techniques would appear to be a valid requirement for the petitioner to set forth on an application for a labor certification. Mr. Shirole's assertion of a labor shortage, therefore, should be tested through the labor certification process.

Mr. Shirole continued:

32% of all bridges in the United States are deficient in some manner. . . . As more and more of the bridges that were built in the post world war construction boom reach the end of their service life, the nation's need for expert engineers with experience in structural rehabilitation has already started out pacing their availability, indicating their shortage in the industry's marketplace.

Harold J. Brown, Administrator of the New York Division of the Federal Highway Administration (FHWA), states that "the work of the FHWA is in the national interest, as it will benefit the whole of America in providing a safer and cost-effective traveling way across the nation." Mr. Brown makes no specific assertion about the beneficiary, offering only the general statement that "maintenance of a trained and competent engineering staff by each State DOT is paramount to the success of the Federal Highway program."

The above arguments, and similar testimony from numerous other witnesses, focus largely on the critical state of the bridges and related infrastructure in New York and elsewhere in the United States. It is indisputably true that the nation's bridges play a fundamental role in the transportation system and, by extension, in the economy itself which depends on the transportation of goods and mobility of commuters and tourists. The employer's assertions regarding the overall importance of an alien's area of expertise cannot suffice, however, to establish eligibility for a national interest waiver. The issue in this case is not whether proper bridge maintenance is in the national interest, but rather whether this particular beneficiary, to a greater extent than U.S. workers having the same minimum qualifications, plays a significant role in the preservation and construction of bridges.

Anil Desai asserts that the beneficiary's "qualifications make him ideally suited for the kind of complicated engineering design that is done here." George A. Christian, P.E., Director of the Bridge Design Section at NYSDOT, states that the beneficiary's prior work experience "was a key consideration in our hiring him in 1993." Lowell Greimann, Chair of the Department of Civil and Construction Engineering at Iowa State University, states that the beneficiary's "unique background and experience in the field of bridge rehabilitation by applying techniques such as post-tensioning is a resource that can be applied toward the many bridge projects upcoming in the United States."

Any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification; the fact that the alien is qualified for the job does not warrant a waiver of the job offer/labor certification requirement. It cannot suffice to

state that the alien possesses useful skills, or a "unique background." As noted above, regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. P.Y. Manjure, Chief Executive of Freyssinet (India) where the beneficiary worked for two years, states that the beneficiary "had rigorous training in the use and application of the world famous Freyssinet System of Post-tensioning." Ayaz H. Malik, P.E., Chairman of the Bridge Design Committee at NYSDOT, states that the beneficiary "has worked on innovative projects such as segmental arch structures patented by the French company 'Matiere'." It is not clear in what capacity the beneficiary "worked on" the Matiere project; the beneficiary's involvement with Freyssinet and Matiere, standing alone, does not qualify him for a national interest waiver. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special, or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer; does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

George A. Christian observes that NYSDOT, and other federal and state agencies; are in the process of converting to metric measurements: Mr. Christian notes that the beneficiary's previous experience with metric measurements is aiding in this transition. The beneficiary's knowledge of this system would not rise to the level of being in the national interest for purposes of section 203(b)(2)(B) of the Act, since standard English measurements can be converted to metric through simple and widely available arithmetical formulas. Moreover, the metric system is accepted as the standard throughout most of the industrialized world, and is therefore commonly known among alien engineers. In any event, the employer's need for a worker trained in the metric system can be expressed on an application for a labor certification.

Reports submitted on appeal reflect substantial cost savings on projects on which the beneficiary worked. The record does not show that these savings are due to the beneficiary's involvement, or that comparable projects executed without the beneficiary incurred significantly higher costs. The reports merely indicated that the projects on which the beneficiary worked could have cost more than they actually did.

A number of the witnesses in this case assert that engineers with the beneficiary's qualifications are in short supply, yet are desperately needed because of the deterioration of U.S. bridges. The petitioner has never clearly explained why the job offer and thus the labor certification requirement should be waived. Given the asserted shortage of qualified engineers with the requisite training, and the evident existence of an offer of permanent employment, the situation appears to correspond closely to the very situation that the labor certification process was designed to address.

Mr. Christian states in a letter that the beneficiary's "training and on-the job experience becomes all the more important since our engineering staff development is a cost-intensive, time consuming process that affects the productivity and quality of the design process." In fact, documents submitted subsequent to the appeal establish the beneficiary's continued involvement in various projects undertaken by the petitioner. The Service does not dispute that the beneficiary provides valuable services to his employer; at issue here is the effect of such services on the national interest when compared to others in the profession. The Service also does not dispute the advantage to the petitioner of retaining qualified staff rather than training inexperienced,

newly hired workers. The contention that no other experienced workers are available, however, should be tested on an application for a labor certification. The petitioner has not shown that it will suffer a substantial disruption in its efforts to maintain New York's bridges and roads if a national interest waiver is not granted and the petitioner is required to test the U.S. labor market through the labor certification process. Furthermore, with regard to experience, the regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on the degree of experience required for the profession, while relevant, are not dispositive to the matter at hand.

Based on the above discussion and a careful review of the record, it is concluded that although the petitioner has shown that the beneficiary is a competent engineer whose skills and abilities are of value to his current employer, the petitioner has failed to establish that a job offer waiver based on national interest is warranted. As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien as they relate to the job to be performed. Moreover, the mere fact that an alien may play an important role in the activity to be performed by the petitioner is insufficient to establish eligibility for a job offer waiver based on national interest, since qualified U.S. workers may be available to play a similar role. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self petitioning aliens) to avoid the inconvenience of the labor certification process. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. o 136l. The petitioner has not sustained that burden. Accordingly, the decision of the director denying the petition will not be disturbed:

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

Chapter Five

Common Mistakes, How to Write Reference Letters, Samples of Reference Letters in Different Types and Fields

1. The Most Common Mistakes Made by Petitioners

1) The three most common mistakes made by petitioners are:

- (1) excessive supporting documents;
- (2) poorly drafted expert reference letters;
- (3) inadequately argued presentations in the cover letter.

Most petitioners confuse quantity with quality. As a result, they substitute hundreds of pages of supporting documents for few well crafted supporting exhibits. USCIS examiners have a limited amount of time to review each petition. If they run out of time while going through an excessively lengthy petition, they have to take time away from other petitions. Rather, they will just stop and make a decision based on what they have seen up to that point.

Therefore, expert reference letters must establish three things:

- i) First, they must establish that the person writing the letter is a genuine expert.
- ii) Second, the letter must clearly explain how the letter writer came to know the factual information stated in the letter.
- iii) Third, the expert must offer an opinion that is relevant to the matter being considered.

2) The Advocacy Is the Most Important Part of a NIW Petition

To avoid the above mistakes, the petitioner should know that advocacy is the most important part of a NIW petition. In this case, advocacy means the way the law and facts are argued in support of the petition. A large number of meritorious cases have been rejected because of poor advocacy, and a large number of marginal cases have been approved because of good advocacy. Since the US Bureau of Citizenship and Immigration Services (USCIS) has not created any checklists, the examiner must be persuaded that the case has merit.

The advocacy is the core of the NIW petition. No matter how well qualified the beneficiary may be, if the case is not persuasively argued, it is not going to be approved. A well argued case explains the attached exhibits and relates the facts to the specific legal requirements articulated in the statute, regulations, legislative history, USCIS policy memos, and prior cases. In the end, the argument makes it clear that the petitioner has put forward a conclusive case for approval.

If the argument is too long and boring, the examiner will lose interest before understanding the merits of the case. If the argument is too short and unconvincing, the examiner will not be persuaded. A successful case strikes the right balance between sufficient detail and argument to establish eligibility, without unnecessary repetition or the inclusion of irrelevant facts or arguments. More than any other types of cases, NIW petitions are won or lost on the strength of the arguments presented.

3) It Is not Enough to List Your Evidence and Expect that the USCIS Examiner Will Approve Your Application

The USCIS has repeatedly stated that the significance of each type of evidence must be evaluated by examiners, which also means that simply providing minimal evidence is not sufficient for a NIW petition approval.

The USCIS examiners have broad discretion to evaluate the evidence. It is not enough to provide basic documentation to satisfy the regulations. An examiner will go through the evidence and decide if it is substantial enough to distinguish you in some way from the rest of your peers. Probably 99% of cases which are denied by the USCIS are denied on subjective grounds. Basically, it is not enough to list your evidence and expect that the examiner will approve your application.

The USCIS has raised the bar higher than before for obtaining NIW classification approval. However, the USCIS' decisions remain consistent over the past years, and stick clearly to the statute and regulations. It does appear that the National Interest Waiver category may be moving toward a higher standard of review, paralleling similar patterns in EB1-Extraordinary Ability and EB1-Outstanding Ability adjudications.

Specifically, there have been RFEs (Request For Evidence) from USCIS regarding the experience, achievement recognition, and the nature of the position. However, USCIS decisions are firmly grounded in the statute and regulations. Therefore, it is very important for alien applicants to carefully present eligibility and strong evidence for the USCIS Service Center to approve your case.

You can present direct evidence towards a factor or criterion, or you can argue that some of your achievement should be considered as an equivalent or comparable evidence towards the criterion. But most importantly, you should not be afraid to try, and keep in mind that a denied NIW immigration petition will not affect your future other immigration petitions through the same category or in different categories.

2. Special Considerations of How to Use Reference Letters as Supporting Evidence for your Petition

1) An Email about NIW Application and the Requirement of Reference Letter

"Hi, my name is Louisa and I am a Post-Doc research fellow at a prestigious university in United States. I am interested in filing for a Green Card application in NIW. I have done extensive research in biomedical engineering. Most cell cultures are grown on flat surface and I developed the technique to grow endothelial cells (the cells on the inner lining of blood vessel) on a tubular structure, a more physiologically realistic model for blood vessels. This is a significant step forward for scientists investigating cardiovascular diseases on blood vessel, the leading cause of death in the USA.

The cost of isolation of a blood vessel is high and labor intensive. However, up until now, it was the only way to get endothelial cells on a tubular structure. Not only would my technique benefit scientist and patients, it would also save many animals from unnecessary scarifications. Based on the results of my study, I have filed two intellectual properties disclosures and waiting for patent submissions from my university's office of intellectual properties.

Also, as my studies suggested, delivering high blood flow rate can lead to the failure of AV access. Physicians can only implant up to 5 accesses in a patient and if all of them fail, the patient runs out of options. Furthermore, the cost of implantation is very high. So if we can prolong the access life by lower blood rate delivery, we can save many patients lives. There is a demand to re-design the dialysis needle to lower the level of turbulence. Most for-profit entities would not be interested in this kind of investment due to the low return rate.

I need to submit a grant for NIH to further study the effects of needle turbulence on animal models. In the mean time, I also need government support to ask the dialysis units lowering the blood rate delivery and see if that would improve access life. I also need to perfect my technique of culturing cells on a tube so that it can be a sufficient substitution of a real blood vessel. I would only need a year to perfect this technique and it might be ready for commercialization.

However, being a foreigner, I am banned from most of government grants. Therefore, I want to apply for Green Card in the NIW category. But first, I want to know more from you about the requirement of reference letter, and do I really need them for my NIW application? Thank you."

2) The Confusion about the Reference Letters in a NIW Petition

There is some confusion about the reference letters (recommendation letters or supporting letters) in a NIW petition. When the Immigration Act of 1990 went into effect, the NIWs were largely unused. Most people who applied for Green Cards without job offers chose to use the "Alien of Extraordinary Ability" category which had more understandable regulations. In the early years, some minimally qualified applicants were approved in the extraordinary ability category. As the number of applications rose, the INS (now named as USCIS) tightened that category up and applicants began resorting to the NIW category.

With the NIW application numbers continue to rise, the USCIS takes different actions. First, the USCIS stated that if a person were of the requisite level of ability, he or she should be able to get reference letters. This sounded reasonable. After all, if a person were applying for a job, the employer would likely want references. The result was that everyone acquired reference letters.

The second USCIS move was to say that the reference letters had to be of a specific type. They had to be from independent sources and should not be from referrers who came from the same country as the applicant. There were a lot of problems with these statements. First, it favored applicants who were well-connected to professors and researchers. This is not exactly a sign of exceptional ability. Second, it cut out referrers from the person's home country who could best comment on the applicant's work. The USCIS backed away from this stance later, although a few examiners still believe that is reasonable.

The third and the most important step was the New York State Department of Transportation (NYSDOT) decision. The NYSDOT wished to get a Green Card for a civil engineer who was involved in designing and retrofitting bridges. The NIW was a popular alternative to Labor Certification Green Cards because it was faster. Many employers initiated both processes and then if an NIW were approved, they dropped the Labor Certification based application.

The problem with this case was that the NYSDOT appealed the denial of the NIW. The USCIS appeals branch used this case to set up a new standard for NIWs. The USCIS settled into more reasonable interpretations of the NYSDOT tests. Now, the USCIS has three tests for a NIW petition. In this situation, reference letters can be used as supporting evidence.

3) The Reference Letters Should be Written and Used as Supporting Evidence for Your Petition

The reference letters should be written and used as supporting evidence for your NIW petition. The most important rule is that there is no proper format for the reference letters. In fact, if you get more than one reference letter, they should be of varying formats. The worst

thing to do is to obtain several reference letters which are all "clones." The USCIS examiners will believe that these letters were actually prepared by the applicant, rather than by the referrers.

The reference letters should be used properly as your supporting evidence. Some applicants have been writing the letters themselves and then having the referrers sign them. This has led to large numbers of letters which all look the same. They contain the same comments and use the same statements about exceptional ability or U.S. national interest.

While the USCIS examiners are not highly trained in the applicants' fields, they can easily recognize that such letters are rarely the product of the referrers. This has led some examiners to increase the standards of the reference letters, i.e. asking for letters from U.S. government agencies and independent experts. No one wins when USCIS examiners ask for such stringent evidence, so it is important that reference letters be used with care.

Generally, reference letters should be written by the referrer, so that the USCIS examiner can see the differences, even if they are only grammatical differences and personal touches. In one previous case, a USCIS Service Center received five reference letters from an applicant and they were all strong, but they were all written by the applicant and signed by the referrers. They were rendered useless because they contained the same repeated grammatical errors.

It is suggested that an applicant should obtain drafts and then discuss them with the referrers. One thing to keep in mind is that the USCIS examiners have seen hundreds of letters, and they can tell which ones are simply applicant-cloned products. There is no number of reference letters you must get. Three strong reference letters are better than 10 average letters.

4) USCIS Adjudicator's View of the Reference Letters

Almost all NIW petitions contain reference letters, and reference letters should form the cornerstone of a successful claim for the EB2 National Interest Waiver classification. The statements made by the referrers should be corroborated by documented evidence in the record. The letters should explain in specific terms why the referrers believe the beneficiary to be of Exceptional Ability caliber.

Letters that merely reiterate USCIS' NIW definitions, or make general and expansive statements regarding the beneficiary and his or her accomplishments, are generally not persuasive. The relationship or affiliation between the beneficiary and the referrers is also a factor to consider when evaluating the significance of the referrers' statements. It is generally expected that an accomplished individual should receive recognition well beyond the circle of personal and professional acquaintances.

Certain testimonials written by other individuals working in the alien's field of endeavor may be submitted as evidence. In some cases, such testimonials merely make general assertions about the alien, and at most, indicate that the alien is a competent, respected figure within the field of endeavor, but the authors fail to support such statements with sufficient concrete evidence. These reference letters may be considered by USCIS, but do not necessarily show the beneficiary's claimed ability. In some cases, USCIS examiners may request letters from truly independent sources, i.e. people who do not know the applicant at all. This was seen as unreasonable by almost all observers in the immigration community.

5) Other Issues about the Reference Letters

There are many issues to be addressed about the reference letters. The reference letters are not required by USCIS, but they can be very useful, and most USCIS examiners for EB1 and NIW applications expect them.

Some applicants may try to avoid the reference letters for confidentiality purposes, but for others, they are easy to obtain. A more thorough compilation of background materials can offset an absence of good reference letters. These materials may include statistics about the area of research, information about professional organizations, awards, journals, etc.

Some professional societies usually do not provide reference letters for their members. In addition, some U.S. government agencies will simply not prepare a reference letter if asked. Therefore, the request of reference letters or “independent letters” heavily favors applicants with connections at government agencies or in professional societies, which may be seen as unfair for some applicants.

The NIW petition is always evolving. The USCIS continues to develop novel interpretations of specific sections of the regulations, so this category will continue to require extensive knowledge of USCIS actions. A review of approved petitions leads us believe that there is no specific pattern for professional fields of successful applicants. This is actually good news, because it probably points to a slight loosening of the NIW reins.

3. Guidance for Reference Letters and How to Write Strong Letters for your EB-2 NIW Petition

1) A Successful NIW Approval Story and His Submitted Reference Letters

An alien applicant conducted leading work in the field of Chemistry. His research focused on biosynthetic studies of potential anticancer compounds. The cancer research generally can be shown to be in the U.S. National Interest, as the development of new cancer treatments is a high research priority in the United States.

The alien applicant conducted important research on free radicals, which are potentially harmful atoms or molecules within the body. Free radicals reacting with body chemicals can cause disease, including cancer and immune-deficiency diseases. The submitted reference letters argued that the alien applicant’s research is of substantial benefit to the health of U.S. citizens and to the U.S. economy, as evidenced by research funding through the National Institutes of Health (NIH) and the National Science Foundation (NSF).

For the documentary evidence submitted with the NIW filing, the alien applicant submitted reference letters from U.S. and international universities and private institutions. These expert reference letters stated that alien applicant is considered an international leader in the field, who has made substantial contributions to the field of cancer research. Twelve publications were authored by this individual, including articles in leading journals and invited book chapters. The alien applicant presented research at prestigious conferences, including the highly-selected national and international conferences.

Through the reference letters and petition cover letter, the alien applicant was able to show that other researchers are building upon the applicant's important and essential research findings, as demonstrated by more than seventy (70) favorable citations to the work that has been done. This applicant is also a member of several professional organizations related to the field, including Phi Lambda Upsilon and the American Chemical Society.

2) The General Guidance for Reference Letters

Many immigration experts believe that reference letters are necessary for a NIW application. If

an application is simply a listing of evidence where reference letters are the main sources of discussion of the applicant's work, then the reference letters must be of high quality. However, if the application contains background information on the applicant's work, its actual and potential benefits, the national or international importance, etc., then the USCIS examiners may see what criteria can be met without many reference letters.

The key is to determine each type of evidence and demonstrate how it satisfies the requirements of the NIW criteria. This is what reference letters are meant to do. The reference letters should be used properly, as a piece of supporting evidence.

An alien applicant should have four to five reference letters from senior experts in the field attesting to his/her significant contributions to the field. It is recommended that a variety of reference letters come from people outside the current employer, and from senior experts in U.S. government and industry.

The basic contents of a reference letter should include:

- i) Writer's qualifications to issue his/her opinion, and the position of the writer in the field (or include a copy of the writer's CV);
- ii) How the writer knows the alien's work;
- iii) Alien's background and achievements, as well as commentaries on how the alien's achievements are contributions of major significance, and how the alien's work has made significant or outstanding contributions to the field;
- iv) References to the alien's exceptional ability, such as evidence of presentations at national or international conferences, publications in national or international journals, memberships in selective associations or societies; receipts of prizes or awards;
- v) Alien possesses unique knowledge, abilities, or experience that sets him/her apart from the professional peers, and references or descriptions as to how the alien may benefit the U.S. in the future.

It is usually recommended that the reference letters should come from the following individuals:

- i) Letters from experts in a field, in U.S. or outside U.S.
- ii) At least one letter from a representative of the alien's present employer who is both highly credentialed and knowledgeable of the alien's work.
- iii) Letters from experts who were the alien's academic advisor, or who collaborated with the alien on the research leading to a final product, thesis, or

paper.

- iv) Letters from past employers who are highly credentialed and knowledgeable of the alien's work.

3) How to Write a Strong Reference Letter for a NIW Petition

The details for a strong reference letter should include:

- i) The reference letters should come from independent experts in government agencies, premier universities, as well as those from nationally or internationally renowned persons, verifying that the applicant was one of the leading experts in the field.
- ii) The reference letters should state that the applicant's extensive credentials and abilities could not be replicated by training others in the field. The testimonies from experts/scholars should describe how the applicant has contributed to U.S. National Interest.
- iii) The reference letters should provide arguments that the applicant's work benefits the health of U.S. citizens, the U.S. environment, economy, or national security. As an example of benefiting the health of U.S. citizens, the applicant's work may result in advancements of significant benefit to research on viral infections, diabetes, tuberculosis, pneumonia, or antibiotic resistance, and so on.
- iv) The reference letters may mention that the applicant is a member of professional societies that are integral to the field.
- v) The reference letters may mention that the applicant intends to continue to work in the area of his or her exceptional ability which will substantially benefit the interests of the United States in some degree.
- vi) The important issue to keep in mind when applying for the NIW category is the uniqueness. The reference letters should show that the applicant is not a normal, average individual in the field, and the applicant stands out among the crowd in knowledge, skills, and talent.
- vii) What form should the reference letters take? The most important rule is that there is no proper format for reference letters. In fact, if a person gets more than one reference letter, they should be of varying formats.

4) Things that the Referrers Should Not Discuss

Are there things that the referrers should not discuss? Yes, there are several areas which should not be included into the reference letters. Primarily, an area to avoid involves statements that there is a shortage of U.S. workers in your field. This will result in the USCIS examiners saying that you should definitely go through the Labor Certification process, not the NIW application.

Also, if you were a Teaching Assistant or Research Assistant in a graduate school, the reference letters should avoid concentrating only on your work as a teaching or research assistant while in graduate school. USCIS examiners will likely say that such information does not distinguish you from other graduate students.

The referrers frequently find it is necessary to comment upon the personality or hard-working nature of the beneficiary. While such comments would be appropriate in other contexts, they are not relevant to the issue of whether a particular immigration benefit should be granted.

5) An Example of How to Get Reference Letters from People in a National Lab or a

Government Agency

Example: I want to apply for NIW soon. My friend told me that U.S. regulation 18 USC § 205 does not allow a federal agency or employee to write a letter in favor of an alien's immigration. My work helps the National Labs, and I know a letter from them will be a good one and help my petition.

How can I handle this situation? Do you have any suggestions? Can they write a letter just mentioning that my works helps them, without even mentioning about me - if that is done, will it be useful for USCIS? Would letters with no government letterhead have any weight or consideration for the USCIS' adjudicators?

The reason I ask this question is that it is difficult for most of my referees at federal agencies or national labs to write it on a government letterhead, so I am little confused. Thank you for your opinion and experiences I really need it.

Case Analysis: A criminal statute, 18 USC § 205, prohibits a federal employee from making representations on behalf of another before or to a federal entity, except in relation to federal employment. Different agencies interpret this differently.

Just remember, not all people who work for such federal establishment fall under this clause. You can ask them - if they are not allowed, they will say so. Many alien applicants were able to get reference letters from different national labs. Yes, they may not be allowed to write one - but they can always write a "personal professional opinion", which means they would not print it on a letterhead, but otherwise it will be the same. The reference letters do not need to be on the agency's letterhead, but the writer should enclose a CV with the reference letter.

Although not applicable in every case, a general information is that a national lab scientist does not mean he or she is a federal employee. We know this as many workers in national labs are contractors, not federal employees. National labs are something called GOCO, which means "government owned, contractor operated." So, some of them may be able to write these letters on their letterheads.

The following is a strategy used by one alien applicant to get reference letters in a national lab:

"When I first asked one person, he was hesitant - I convinced him by showing him another letter written by his colleague for another applicant...that way, he became comfortable with writing one. In fact, one senior person, who is close to retirement, printed it on a government letter head, saying he could not care less about such rule...so, try senior people or even ones just retired."

4. Sample Reference Letters

1) Sample Reference Letter for Medical and Biomedical Fields

<The Date>

Center Director
USCIS Nebraska Service Center
P.O. Box 87140
Lincoln, NE 68501-7140

RE: Form I-140 Petition of EB2 National Interest Waiver for Dr. Matthew Mehta

Dear Sir or Madam:

I am writing in enthusiastic support for Dr. Matthew Mehta's petition for immigration to the

United States. Specifically, I am writing to provide evidence that Dr. Mehta's work is in the national interest of this country.

The Georgetown University Medical Center is a comprehensive medical research center. As a professor and chairman of the Radiology Department and Director of the Radiology Imaging Science (RIS) Center, my work is dedicated to better understand of the cancer spread leading to the design of new approaches to its early detection. The research in our center includes basic and clinical research. I have worked in this field for approximately 20 years. Enclosed please find my Curriculum Vitae documenting my qualifications to recommend Dr. Mehta for his EB2 National Interest Waiver immigration application.

Before coming to Georgetown University Medical Center, Dr. Mehta did his PhD and Post-doc fellow research at the University of Chicago in Biomedical Science.

During his PhD study, he constructed appropriate viral vectors to carry the IL-2 gene and injected these vectors into tumors growing in mice. He discovered that the mechanism involves basic fibroblast growth factors and metalloproteinases-2. He also discovered that tumor regression subsequent to introduction of the IL-2 gene into primary neoplasms was associated with induction of systemic immunity and, hence, regression of tumors distant from site of therapy. His research results were published at famous Cancer Research in 2004.

During his Post-doc fellow research, Dr. Mehta used the novel gene therapy against human prostate cancers growing in the prostate of athymic nude mice with dramatic therapeutic results. Dr. Mehta discovered that the enzyme elastase expressed in neutrophils is most important for the induction of angiogenesis. Because neutrophils can infiltrate into tumors, they can accelerate the growth of the tumors. The most important discovery made by Dr. Wang involved the design of new and novel vectors to introduce the interleukin-2 gene into tumors.

Specifically, he used tumor cells infected with a lentinovirus engineered to carry the interleukin-2 gene. This discovery is novel, exciting, and far-reaching. The single intratumor injection of this unique interleukin-2 construct produced not only complete regression of actively growing tumors, but also destruction of distant lung metastases. His research results were published at prestigious Journal of Biomedical Science in 2006.

Dr. Mehta is currently a research associate in the RIS Center of the Radiology Department of Georgetown University Medical Center. He has proposed various computer-aided diagnosis schemes for early detection and classification of cancerous lung nodules.

Despite great improvements in diagnosis, surgical techniques, and systemic therapy, the majority of cancer patients still die of metastases (cancer spread). Lung cancer is one of the most common and deadly diseases in the world. During the last decade, it has become clear that the progressive growth and spread of cancer cells to distant organs is dependent on the induction and maintenance of vascular supply. The cure of lung cancer depends highly on the early detection and treatment of small and localized tumors. However, early detection of cancerous lung nodules in chest radiographs has been a clinically difficult and challenging task.

Although skilled and experienced lung radiologists can achieve a high degree of accuracy in the diagnosis of chest nodules, still the performance of using direct inspection is limited by the subjective decision criteria used by different radiologists, a time consuming detection cycle, and high miss rate of small and low contrast nodules surrounded by noisy anatomic lung background. Among the researches of improving the diagnostic accuracy, Computer Assisted Cancer Diagnosis (CACD) has been concluded as a promising approach.

A prototype of computer-aided system has recently been implemented with Dr. Mehta's primary efforts. We are in the stage of evaluating the system in a clinical setting. This system will be used to assist the chest radiologist in detecting lung cancer. Recently, we have received an American Cancer Society Research Award which extremely encourage us to continue working on advanced intelligent systems to assist radiologists in early detection of lung and breast cancers. Dr. Mehta's research is a timely project prior to a commercial implementation.

Dr. Mehta 's innovative research, using artificial neural networks to detect lung nodules, was an idea with a great potential. He has been working on the development and application of CACD system in digital chest radiography to enhance the detection of small or potential cancerous nodules. He has unique expertise in numerous complex techniques including artificial neural networks, genetic algorithms, and fuzzy logic.

Application of these techniques and understanding of clinical aspects of lung cancer permit him to develop an intelligent medical diagnostic imaging system. Furthermore, his research may have broader implications in other medical or difficult diagnosis tasks, such as early detection of breast cancer in mammography. Dr. Mehta's exciting development has been processed for a patent application, and the data are submitted for publication. The development of this technique is clearly in the U.S. national interest.

Dr. Mehta has been one of the pioneers in using the neural networks for lung nodule detection. He wants to dedicate his research career in making the use of the neural networks in lung cancer detection clinically relevant. Dr. Mehta is currently conducting an important project of using CACD for detecting lung cancer based on a large proven cancer database. The database, which is in our possession, consists of the complete medical records and chest x-ray images of 10,000 lung cancer cases collected over the past 20 years by Johns Hopkins Medical Center. Dr. Mehta will be using this database to test the system that he has been developing. The success of this project will potentially increase radiologists' diagnostic accuracy and reduce health care cost.

I am Dr. Mehta's supervisor and have known him for four years. Dr. Mehta is intelligence, hard work, and commitment to lung cancer research. Dr. Mehta is in a unique position to assist radiologists in the early detection of lung cancer. His research is doubtlessly in the national interest of the United States. I believe that Dr. Mehta will be very productive in his research efforts, and I fully support and recommend that his petition be granted.

Sincerely,

Corol Karlan, PhD

Director of ISIS Center

Georgetown University Medical Center

2) Sample Reference Letter for Information Science and Technology Fields

<The Date>

Center Director

USCIS Nebraska Service Center

P.O. Box 87140

Lincoln, NE 68501-7140

Re: Form I-140 Immigrant Petition for Alien Worker in EB2 National Interest Waiver - Mr. Kevin Yong

Dear USCIS Officer:

It is my pleasure to support Mr. Kevin Yong's petition for immigration to the United States in the EB2 National Interest Waiver category. I am writing this letter to provide evidence that his research and development work is in the national interest of United States.

My name is Alexandre Rosa, Chairman of the Technology Program Committee at General Electric (GE) Power Systems. Mr. Kevin Yong is presently a researcher at GE Power System developing the Electronic Document Management System (EDMS).

Coming from INT International as a key researcher and developer in the project, Mr. Kevin Yong is productive and has been working on the EDMS project, funded by GE, for the past three years.

At GE Power Systems, project documents for federal government and companies in United States and in other countries need to be carefully managed. Control of design documents through a product's life cycle is also required for regulatory compliance. In traditional engineering environments, manual document handling and workflow process were used, which may lead to loss of data and time.

With EDMS research and development, it is easy to access, store, and track many types of documents. Also, electronic forms may be created to ensure that all information is documented while performing a procedure. Currently, critical documents and engineering drawings exchanged between GE and its customers, including U.S. federal government agencies like Tennessee Valley Authority (TVA), are managed by EDMS.

EDMS research and development is not only crucial for U.S. company's business but also important for the government and our nation's future. In the language of Section 3301, in legislation codified under Title 44 of the United States Code, government's documents and records need to be securely managed "as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." According to a report submitted to the U.S. Congress in 2003 by Archivist of the United States, John W. Carlin, the government's "electronic records will increase by more than 300 times the volume in the near future."

The research and implementation of EDMS also helps U.S. companies keep a competitive advantage in the international market by achieving enterprise-wide business and mission critical information management. Previously, an old database program was used to manage Vendor Document (VENDOC) at GE Power Systems for all documents and drawings exchanged between GE and its vendors. With the obsolete architectures, this system could not help GE maintain technical competitiveness over its major foreign competitors, such as ABB and Siemens.

Recently, a newly designed VENDOC process in the EDMS, with secure document revision control and worldwide document access ability, has replaced the old database system. As a principal developer, Mr. Kevin Yong demonstrated his excellent research ability by integrating new techniques.

From GE's annual report, GE's revenues and earnings have reached a double-digit growth in 2006. GE Power System relies on the international market for its growth, and has brought more and more jobs to our nation since 2004. EDMS project improves the U.S. economy by helping companies improve its management and create more job opportunities for U.S. workers.

Mr. Kevin Yong's current EDMS research project can also benefit U.S. government agencies. As

government projects, more regulation requirements need to be met for the TVA projects: TVA-NEW01 and TVA-GALLATIN. For these projects, GE assumes the entire scope of the power plant design from the feasibility study to commercialization. The traditional manual Action Item processing method is not a acceptable solution for projects like TVA. By applying EDMS in TVA projects, documents exchanged between TVA and GE may be handled by EDMS; quicker response to TVA's Action Items can be performed; and government's regulatory and ISO-9002 standard have been met.

Five years ago, a Young Researcher Program (YRP) was established by GE to provide opportunities for outstanding young researchers inside and outside GE to present their achievements in research. The participants' work was recognized and awarded in the form of several Fellowships. The enrollment into this program is highly competitive, where only about 15 young scientists and researchers were strictly selected by the review panel to participate the program from more than 800 applicants all over the world. Therefore, each YRP participant is without a doubt one of the most brilliant and promising young scientists in the world. Mr. Yong is one of the YRP participants this year. He was invited to attend the program and give an orally presentation in a special session held on the last day of the YRP conference at Austin, Texas. Only a very few participants had the honor to present their work orally at the yearly YRP conference.

Also, as an expert and Chairman of the Technology Program Committee at GE Power Systems, I attended the EDMS presentation session recently at a national conference held at Cincinnati, Ohio, and further discussed with Mr. Yong on his research during the banquet following the presentation. Mr. Yong elegantly presented his work and impressed me and other experts with his profound knowledge in the field. Mr. Yong's study and development in the EDMS in many aspects greatly helped to expand our understanding and application of EDMS in the industry. The research in this field has tremendous potential in that the approaches he used can be applied to the study of other related fields.

Knowing Mr. Yong's work since June 2004, I am impressed with his research and development capabilities. He has a strong mathematics and information technology background. He also has deep knowledge associated with electronic document management. Mr. Kevin Yong is a principal researcher in the EDMS project at GE, who can effectively solve difficult theoretical problems and challenging practical problems. He has established himself as an active researcher and developer in the field of EDMS and information technology over the past few years.

Mr. Yong is also a highly self-motivated and productive researcher. Considering the amount of work, Mr. Yong's productivity is very unusual. Judging from Mr. Yong's record in research and his exceptional performance, I firmly believe that he will be a successful researcher in future. I strongly feel that Mr. Yong will be an important asset of the United States, and recommend that he be granted permanent residency.

I hope this letter will fully support Mr. Kevin Yong's petition for a change of his visa status, so he can continue his research and development projects in EDMS and other related information technology fields. His research is certainly in the national interest of the United States, in light of improving U.S. economy, bringing more jobs to U.S. workers, and saving our nation's legacy. If I can be of further assistance in support of his application, please feel free to contact me.

Sincerely yours,

Alexandre Rosa

Chairman of the Technology Program Committee

GE Power Systems

Chapter Six

How to Write a Petition Cover Letter, Samples of Petition Cover Letter, and Samples of Filled Petition Forms

1. Understand the Petition Cover Letter is the most Important Part of a NIW Petition

(1) A Formal Cover Letter Is Required to File a NIW Petition

Because the NIW does not require the Labor Certification, once you have the recommendation letters and other supporting documents ready, you need to write a cover letter to file the Form I-140 petition.

For NIW petition, the most significant issue is that you need to prepare a formal petition cover letter based on all the documents you have, including the recommendation letters and your achievement evidence. You should remember that documents such as the letters of recommendation are only the supporting evidence, and it is the formal petition cover letter that is directly reviewed by USCIS immigration officers.

In most cases, the formal petition cover letter may be the only document that will be carefully read by an immigration officer. The content and quality of the petition cover letter will either make or fail your case. A carefully written petition cover letter often takes a great amount of time to write. A NIW petition cover letter should be a result of many hours of analyzing the documents and your technical background in view of the legal requirements, and many more hours of drafting and revising in order to prepare a good and solid petition.

(2) The Petition Cover Letter Is the Most Important Part of the NIW Application

The petition cover letter brings the evidence you are presenting together:

- 1) First, your cover letter should explain your field of endeavor, and perhaps what criteria should be considered to determine your excellence in a field.
- 2) Second, it should explain the evidence that you have provided with the application, towards the criteria which USCIS has set for this category.
- 3) Third, by giving reference to your current work/project and how you keep on updating your professional skills, it should explain the evidence you have presented, and prove that you are still applying your skill set that you are claiming as exceptional abilities.

Some applicants believe that they have read the USCIS regulations and that they feel prepared to file their applications. The fact is that the regulations will get you about part of the way to know enough to file a successful application. The reason is that the regulations list only the objective evidence which is required for the NIW category.

The USCIS examiners have broad judgment to evaluate the evidence. It is not enough to provide basic documentation to satisfy the NIW regulations. The USCIS examiners will go through the evidence and decide if it is substantial enough to distinguish you from the others. Most denied NIW petitions are denied on subjective grounds. It is not enough to just list your evidence and expect a USCIS examiner to approve your application.

Some people with a denied case have sent a petition cover letter to the USCIS which looks like a resume and got the USCIS issued Request For Evidence (RFE) later. These people do not realize that the petition cover letter is the most important part of the NIW application. The petition cover letters typically range in length from 15 to 25 pages long.

(3) How to Present Your Evidence in a Petition Cover Letter

An alien applicant should explain that his or her current work/project is in the national interest of the United States, and relate the alien's work/project to the following topics:

- 1) Improving the U.S. economy;
- 2) Improving the U.S. health care;
- 3) Improving wage/working conditions of U.S. workers;
- 4) Improving education and training programs for U.S. children and under-qualified workers;
- 5) Improving culture awareness and diversity through artistic endeavors;
- 6) Providing more affordable housing for young and/or older, poorer U.S. residents;
- 7) Improving the environment of the U.S. and make more productive use of the natural resources;
- 8) A request from an interested U.S. government agency;
- 9) Significant scientific contributions;
- 10) Creating employment opportunities.

For an alien applicant working in scientific and engineering fields, the applicant should also explain that you have distinguished ability and accomplishment in a field, and you possess unique and innovative skills, knowledge and background that serve the U.S. national interest. An alien applicant's claims should also be supported by the following evidence:

- 1) received major national or international awards, and describe the criteria and significance for any national or international prizes or awards you have received;
- 2) hold membership in prestigious organizations which require outstanding achievement for their members, and emphasize the criteria to become a membership;
- 3) have citations by others in the fields, and write a short paragraph regarding the number of citations found in scientific journals in your field;
- 4) have judged the work of others, and describe how and when you served as a reviewer for other's work;
- 5) have made significant contributions to a field as evidence by enclosed letters of testimony, and explain your contributions by using selective quotes from reference letters that attest to your significant contributions to the field. This should be written in language that someone who is not in your discipline can understand.
- 6) have published in your field, and describe the papers, books and book chapters you have published.

2. Show Your Achievement and Benefits in a NIW Petition Cover Letter

(1) The Methods of Showing Your Achievement and Benefits to U.S. National Interest in a Petition Cover Letter

There are certain words or types of language which are useful for your petition cover letter. USCIS examiners are gradually getting better at understanding the basic issues in the most common fields, such as scientific researchers, engineers, and physicians, but they still like to see in the cover letter that the applicant is 'outstanding', 'at the top of the field', 'on the cutting edge', 'pioneering', etc. You should remember that the entire application is about setting yourself apart

from the others.

Some applicants go into too much detail in the cover letter about the applicant's personal or social attributes. For example, it is good to say that the applicant is honest, dedicated, and pleasant, but when this drags into multiple paragraphs, it gets in the way off the cover letter's main purpose. When a person applies for a job, an employer wants to know if the person will be a pleasant coworker, so more personal comments are reasonable. However, for a NIW application, an USCIS examiner only wants to know how the applicant compares to others in the field.

Therefore, a cover letter should:

- 1) Present testimonials attesting to your exceptional ability;
- 2) Provide evidence that you have distinguished yourself from your peers;
- 3) You are seeking employment in an area of substantial intrinsic merit;
- 4) Prove that the prospective substantial benefits you will offer are national in scope;
- 5) Discuss your work and its current and future applications, both academically and in the private industry if possible;
- 6) Describe your work, how it affects the field of study, its potential for broader applications;
- 7) Describe how you are essential or intimately connected to the work, the effects of this work on the U.S. and its people;
- 8) Explain that the delay caused by the Labor Certification process will be detrimental to U.S. national interest.

The methods of showing your achievement or recognized work in the cover letter include:

- i) Go into detail about the journals which published your articles, perhaps a thorough discussion of the peer review process with notes about the types of experts chosen as manuscript reviewers.
- ii) Talk at length about the actual or potential benefits of your work, and show statistics which paint a clear picture of the importance of your work.
- iii) If applicable, discuss the economic benefits of your work, or show economic statistics related with your study.
- iv) If applicable, discuss the normal people benefits of your work. For example, for medical researchers, economic statistics can be discussed together with human suffering from conditions which you study.

Remember that USCIS examiners are human beings; some information will have a stronger psychological impact than other information. Here, we need to think about the examiner's psyche, and make the examiners realize that your work is important and that they can feel good about approving your case.

(2) How to Convince the Immigration Officers that You Have Done Exceptional Work

You should write the cover letter in general terms as if you were writing for Time or Newsweek magazine.

Immigration officers with bachelor's or higher degrees will read the cover letter and the reference letters. They cannot know your field, but they do spend most working days evaluating and synthesizing information and drawing conclusions.

Therefore, you need to convince the immigration officers that you have done and/or are doing exceptional work, and that your work will help U.S. citizens and someone they know, and you need to explain how your research is useful. For example:

- 1) "a gene that affects an essential biological function can help diagnose a disease and treat the fetus or the neonate;" or
- 2) "identify biological patterns found in epidemic disease models and in population models, and apply the lessons learned to models that characterize the dynamic behavior of computer networks, and develop immunization techniques to safeguard against the spread of computer viruses while strengthening the security and performance of networks;" or
- 3) "adds carbon nanotube fillers to traditional vibration reduction materials to enhance their energy dissipation capability, and improve their ability to operate at high temperatures. The outcome of the research will benefit the performance, cost, safety, and reliability of future manufacturing equipment, hand-held tools, sensitive laboratory equipment, and everyday electronic devices;" or
- 4) "develop new techniques for measuring electric current and heat transfer properties across various types of nanojunctions, the research may be applied to the future design and development of nanoelectronics and highly efficient thermoelectric energy conversion devices;" or
- 5) "investigating and solving problems in medicine and biology by molecular engineering of materials and surfaces, and working to design new molecules that may one day fend off an HIV infection."

Also, you may need to provide documentation on how much the problem you are trying to solve costs each year in dollars, resources, or human suffering. You may also explain how you are essential to the success of the research or project.

(3) How to Draw the USCIS Examiner's Attention and Distinguish Yourself from other Applicants

Let us discuss a hypothetical example which should illustrate a petition cover letter's issue. Assume that there is an applicant who is a medical researcher. Among this person's evidence are 8 publications and funded research. If the petition cover letter is a simple listing of evidence, then this applicant will look like so many others. There is nothing to draw the USCIS examiner's attention and distinguish the applicant from the hundreds of other applicants. On the other hand, the applicant may look at the journals in which the publications appeared, and explain the following question in the cover letter:

- 1) Were they international, peer-reviewed journals?
- 2) How many publications per year did the applicant produce?
- 3) Was the applicant the first author? If not, was the second author or last author important?
- 4) Who funded the research? Was it a U.S. government agency? This would show national importance.

The key here is to dissect each type of evidence and demonstrate how it satisfies the substance of the NIW criteria. After all, this is what the cover letter is meant to do. If the petition cover letter contains background information about the journals, about the sources of funding, importance of the work, etc., then it is clear that the provided evidence may satisfy the NIW criteria.

Also, the cover letter can quote the regulations directly to spell out the law. To help ensure that your case will not be wrongfully denied by inexperienced USCIS examiners, when writing the cover letter, you can quote the regulations directly to spell out the law for a potentially less-than-informed adjudicator. That way, the examiner should not be confused about language or requirements, and it will lead to accurate adjudications on the first try.

3. Special Considerations for Required Documents and Supporting Materials, and a Complete List of Documents for a NIW Petition

1) The Major Documents Needed for a National Interest Waiver Petition

Many accomplished foreign nationals have successfully obtained their Green Cards in the National Interest Waiver category. However, the standards are rigorous. If you meet the qualification requirements, you will be able to avoid going through a Labor Certification process or even not need to have a job offer, and you will be able to apply for your Green Card without the sponsorship of an employer.

For those who have exceptional achievements in a field and work in a U.S. national interest field, applying for Green Card in the National Interest Waiver category may be their best choice. A National Interest Waiver case can be petitioned through the USCIS Service Center which has jurisdiction over the place of an applicant's residence, and the applicant must provide several type of documents with the petition. An applicant should not send original documents; photocopies of documents are acceptable.

For academics or researchers, evidence is needed in the form of letters and affidavits from prominent experts who can confirm an applicant's scientific or scholarly contributions of significance to the field. A case is strengthened by letters from outside an alien's current community. The referrers should also outline their own standing in the field.

Your application package should include:

- a. A Cover Letter:** This letter brings the evidence you are presenting together. First, a cover letter should explain your field of endeavor, and also explain what criteria should be considered to determine your excellence in a field, and your employment is important to the national interests of the United States. To be considered in the national interest, you should show significantly above what necessary to prove the "prospective national benefit" required of all aliens seeking to qualify as exceptional. Second, it should explain the evidence that you have provided with the application. Third, it should explain your current job, and how you keep on updating your professional skills, and prove that you are applying your skill that you are claiming the exceptional abilities to benefit the United States.

b. Several Reference Letters: The language of the reference letters should be such that it recommends you for exceptional abilities and your accomplishment in a U.S. national interest field. The person writing the letter should give an introduction about himself or herself, and then give reference to your research and professional work, its importance, and how it sets you apart from other peers. Also, it should mention how beneficial it would be for U.S. national interest if your immigration petition is approved.

2) The Required Documents for a National Interest Waiver Petition

The National Interest Waiver petition is for aliens of exceptional ability in sciences, arts or business, or advanced degreed professionals (Master Degree and up). An qualified alien applies for U.S. permanent residence status seeks a waiver of Labor Certification or the offer of employment by establishing that such a waiver would be in the U.S. national interest. In order to qualify for the classification of "Alien of Exceptional Ability", the NIW applicants should provide documentation of the following items:

- i) An official academic record showing that the alien has an advanced degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- ii) Evidence in the form of letters from current or former employers showing that the alien has experience in the occupation for which he or she is being sought;
- iii) Evidence that the alien has commanded a salary, which demonstrates exceptional ability;
- iv) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations;

A license to practice the profession or certification for a particular profession or occupation.

3) The Supporting Documents for a National Interest Waiver Petition

The supporting documentation is to establish that an applicant qualifies as an alien of exceptional ability, and that the alien is going to be in activities using his or her exceptional abilities to the benefit the United States.

The required evidence should also prove that the benefits of an alien applicant's employment will be in national scope, and the employment is in an area of substantial intrinsic merit. To qualify as an individual of exceptional ability, an applicant may include the following evidence:

- (1) Receipt of major and recognized prizes or awards for excellence in the field. Provide photocopies of award certificates or copies of letters with the award notification.
- (2) Memberships in associations in the field which require outstanding

achievements of their members, as judged by recognized experts in the field. Provide copies of appointing letters.

(3) Evidence of authorship of scholarly articles in the field, in professional journals, or other major media. Provide copies of articles.

(4) Published material in professional or major trade publications or major media about applicant's work. Provide copies of publications.

(5) Evidence of participation on a panel, or individually, as a judge of the work of others in the field. Provide photocopies of letters of appointment to editorial boards or letters of invitation to review the work of others.

(6) Provide copies of certified and translated diplomas and transcripts. Only the highest degree is necessary, unless your current work or employment is based on a previous degree.

The following items are considered to be helpful supporting documents by USCIS:

- i) Peer-reviewed presentations at academic symposia;
- ii) Peer-reviewed articles in scholarly journals;
- iii) Testimony from other scholars about how the applicant has contributed to an a field;
- iv) A significant number of entries in a citation index which cite the alien's work as authoritative in the field;
- v) Any documentation of participation by the alien as a reviewer for a peer-reviewed scholarly journal;
- vi) Recommendation letters or testimonials from scholars describing the alien's work as outstanding.

You should provide detailed evidence for everything that you will claim in your application. This means that your application package may be big and difficult to navigate. Therefore, you need to prepare and present your case in a well-organized manner. Facts and supporting documents should be assembled coherently, and you should list all the documents that you are providing. Also, there should be a flow in the presentation of the evidence, and you should make it clear that the evidence is indeed relevant. You should also keep a copy of everything you mail to USCIS.

4) A Complete List of Documents Required for a National Interest Waiver Petition

Generally, the following documents are required for a NIW petition:

- (a) An Form I-140 petition cover letter to USCIS;
- (b) Filled I-140 form;
- (c) Filled form ETA-750 Part B, two copies;
- (d) Several reference letters (or recommendation letters) from experts in your field, explaining your standing as an "alien of exceptional ability";
- (e) Copy of your passport;
- (f) Copy of your I-94 card (front and back);
- (g) Copy of Notice of Approval for your current visa status (H, L, J, F, O, etc.);

- (h) Your current Curriculum Vitae (or Resume) including your employment and research history (names, addresses, and exact dates of employment.);
- (i) Copies of college degree certificates;
- (j) Copy of any authorized employment card;
- (k) Copies of publications, presentations, abstracts, invitations to conferences for the alien;
- (l) Citations statistics, and copies of major articles where your research has been cited;
- (m) Comments on your work by other experts in the field, and requests for reprints of your publications;
- (n) Copies of any academic or professional awards or honors you have received;
- (o) Copies of your membership in professional associations;
- (p) Documents of your participation, either individually or on a panel, as the judge of the work of others in the field;
- (q) Critical reviews, advertisements, press releases, publications contracts, or endorsements;
- (r) Box office receipts or record, cassette, compact disk, or video sales;
- (s) Your spouse or children's information and documents.

4. The Detailed Instructions and Important Aspects of Required Petition Form I-140 and Form ETA-750 Part B

1) Form I-140

The Form I-140 is used for all Green Card applications through employment petition. The form has one section asking for information about your petitioning employer and another section asking for information about you. If a particular question does not apply, it should be answered "None" or "N/A."

It is essential to answer each question truthfully. Failure to reveal requested information may result in being permanently barred from the U.S.

Part 1. Part 1 asks for basic information about the petitioner and is self-explanatory.

- 1. If an alien is the petitioner, then use the top name line, and enter personal information and the alien's Social Security Number (SSN);
- 2. If an employer is the petitioner, then use the second line, and enter the employer's information and the IRS Tax number.

Part 2. Part 2 asks you to check the box indicating the classification you are seeking.

- a. An alien of extraordinary ability (EB-1A)
- b. An outstanding professor or researcher (EB-1B)
- c. A multinational executive or manager (EB-1C)
- d. A member of the professions holding an advanced

degree or an alien of exceptional ability, who is NOT seeking a National Interest Waiver (EB-2 PERM)

- e. A professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree) or a skilled worker (requiring at least two years of specialized training or experience). EB-3
- f. Reserved.
- g. Any other worker (requiring less than two years of training or experience).
- h. Soviet Scientist.
- i. An alien applying for a National Interest Waiver, who IS a member of the professions holding an advanced degree or an alien of exceptional ability (EB-2 NIW)

Part 3. This part asks questions about you. Your current immigration status must be disclosed. "A" number is usually issued only to people who previously held Green Card or has made previous Green Card application. If any of the boxes do not apply to you, answer "N/A."

Part 4. Part 4 asks at which consulates you intend to apply for your Green Card and also requests your last foreign address, if you are currently living in the U.S. In listing a consulate, keep in mind that U.S. consulate in your last country of residence is the only one legally required to accept your application.

- a. the question of "Are any other petition(s) or application(s) being filed with this Form I-140?" if you want to concurrently file Form I-485 and other forms such as I-131 and I-765, you can check the form's name here.
- b. For the question of "Has any immigrant visa petition ever been filed by or on behalf of this person?" if any immigrant visa petition has ever been filed by or on behalf of the person named in Part 3, such as Form I-130 or Form I-140, you need to attach an explanation. For Example: "A Form I-140 petition was filed on January 10, 2008 with TSC in the immigration category of EB3, with receipt number XYZ-01-234-56789. Its current status is pending."

Part 5. Part 5 asks for additional information about the petitioner, including type of business, date established, gross and net annual income, and number of employees. It also asks for a non-technical description of the job.

- i) an employer is the petitioner, enter the type of business, date established, gross and net annual income, and number of employees;
- ii) for self-petition, enter the alien 's annual income and a non-technical description of the occupation, such Computer Engineer, Biomedical Researcher, or PhD Candidate.

Part 6. It asks for basic information about your proposed employment and is self-explanatory.

Here, the SOC code is the "Standard Occupational Classification (SOC) Code,

which was developed in response to a growing need for a universal occupational classification system. Such a classification system allows government agencies and private industry to produce comparable data. It is designed to cover all occupations in which work is performed for pay or profit, reflecting the current occupational structure in the United States.

The SOC code can be found at the web site: <http://stats.bls.gov/soc/socguide.htm>

Parts 7-9. These parts request information on accompanying family members, and require signatures. They are self-explanatory.

2) Form ETA-750 Part B

The Form ETA-750 part A and B are the forms used in the Labor Certification. Since the Labor Certification is waived for this petition, only the Form ETA-750 part B is used to show the employee's experience and qualifications.

The Form ETA-750 part B must be submitted in duplicate. the form must have an original signature, although the form itself may be a photocopy. All questions on the ETA-750 should be answered truthfully, as is the case on all government forms.

Part B, Question 1-14: These questions are self-explanatory.

Part B, Question 15: You are asked to list any job experience you have had in your lifetime which is relevant to the job presently being offered. All your work activities for the past three years, relevant or not, must also be listed.

Make sure your employer does not leave any gaps in accounting for your time during the past three years. If your were unemployed for any time period, write this down. If an extra sheet of paper is needed to cover all your experience, note in this question that an extra sheet is attached.

5. Sample of Petition Cover Letter 1 for Form I-140 Immigration of EB2 NIW

This petition cover letter is written in the format of self-petition, but it can be easily changed to an employer sponsored petition

<The Date>

USCIS Nebraska Service Center

P.O. Box 87140

Lincoln, NE 68501-7140

RE: I-140 Immigration Petition for Alien Worker Dr. Fang Liang - A member of the professions holding an advanced degree or an alien of exceptional ability - National Interest Waiver

Dear Sir/Madam:

This is to file an I-140 -- Immigration Petition for Alien Worker for myself under the section: A member of the professions holding an advanced degree or an alien of exceptional ability - National Interest Waiver. I have enclosed an I-140 form, a check of application fee, and numerous supporting documents with the petition cover letter. Your help to my petition is greatly appreciated.

QUALIFICATION SUMMARY

I am currently an Assistant Professor in tenure-track at the Department of Material Engineering, Stanford University, as well as a key researcher in the International Institute for

Nanotechnology at Stanford University. My research interest and projects are to develop new nanofabrication methods and design nanomaterials for nano/micro electronics, biological and chemical sensors, and gene based detections. My research results can be applied in the electronics industry, military, and health care areas, and bring immediate benefits to the national interests of the United States.

Stanford University is recognized as one of the premiere research and educational institutions in the United States, and it is also a leader in one of the most widely heralded new sciences – nanotechnology. Nanotechnology relates science and technology to the manipulation of the structure of matter at the molecular level. The basic unit of measurement is the nanometer, equivalent to one-billionth of one meter (1/100,000th the width of a human hair). It is widely established that by manipulating the structure of materials at their atomic level, we will be able to develop inexpensive materials at the nanoscale, and also extend the existing sciences into the nanoscale.

I joined the Stanford University faculty in 2002. I am also a collaborator on nanotechnology research associated with Stanford's International Institute for Nanotechnology, one of six National Science Foundation (NSF) Nanoscale Science and Engineering Centers in the United States. I earned a doctorate in material engineering in 2000 from the University of California at Los Angeles and a bachelor's in physics in 1991 from Shanghai Jiaotong University, China.

As a long-time researcher in the nanotechnology field, I primarily conducts research on nanoscale structures and develop the corresponding applications in nanoelectronics and biological sensing. There are significant U.S. national interests and a concerted effort from all sectors of industry towards the development of technology based on the nanoscale. As an enabling technology, nanotechnology is expected to have an impact on a wide range of applications in United States industry including materials, manufacturing, computing, medicine, environment, energy, automotive, national security, and aeronautics.

I have worked on developing new and efficient devices with nanoscale gaps, which can bring connections to single molecules. This work was funded by Defense Advanced Research Projects Agency (DARPA), and has been published in Science journal, which is one of the most prestigious scientific journals in the world. My exceptional research ability has achieved great recognition internationally and appraisal from both the scientific community and public media, including The New York Times, Chemical & Engineering News, Materials Today, and Stanford University News Release. (Exhibits 1-5).

On my current position, I continues to excel and makes major contributions to the field. My exceptional research ability and professional contributions in the nanotechnology field have been expanding. One of my works on developing Raman substrates for biological and chemical sensing was funded by the National Institutes of Health (NIH) with grant number 64056. The research results have been published in Proceedings of the National Academy of Sciences (USA), and the paper was also highlighted by Nature Nanotechnology (Exhibits 6, 7).

I have established a track record of excellence in research, and I am recognized internationally as outstanding in the field. I will continue to work in the field of my excellence, which is the research in the area of nanotechnology. The provided evidence in this petition clearly indicates that my research work is in U.S. national interest, and my exceptional research ability can greatly benefit the United States.

MY WORK IS IN AN AREA OF SUBSTANTIAL INTRINSIC MERIT AND IN U.S.

NATIONAL INTEREST

My research work is in an area of substantial intrinsic merit and in U.S. national interest. Over the last two decades, the research and development on nanotechnology have kept growing. In 2000, former president William J. Clinton signed the National Nanotechnology Initiative, “the administration is making this major new initiative, called the National Nanotechnology Initiative, a top science and technology priority. These developments of nanotechnology are likely to change the way almost everything—from vaccines to computers to automobile tires to objects not yet imagined—is designed and made.” On December 3, 2003, President George W. Bush signed into law “The 21st Century Nanotechnology Research and Development Act” (Public Law 108-153), thereby enacting many ongoing activities of the National Nanotechnology Initiative. (Exhibits 8-10)

Nanotechnology has the potential to transform materials and manufacturing, and the research is driven by the need to improve the functionality of materials. For example, there has been a significant amount of research directed at developing “self-healing” materials, biological structures which have the ability to reconstruct naturally. However, all manmade materials experience some form of failure - glass can crack, rubber can break down, etc. By applying nanotechnology to materials manufacturing, the self-healing that occurs in biological structures can potentially be simulated in manmade structures.

In terms of electronics and computing, nanotechnology has the potential to have a big impact. Potential applications include the expansion of increasingly greater amounts of data storage on an increasingly smaller scale, and the synthesis of all components related to computer technology, including wiring and connecting. One specific example is a chip embedded in the wall of a structure that controls the operational demands of the homeowner or guest (e.g. with the flip of a switch, the color of the wall could change to fit the individual’s choice).

Nanotechnology is also anticipated to yield promising returns for national security. One of the primary challenges of maintaining effective national security is rooted in the need for streamlined and protected communication centers, communication lines, and data storage. Increasing the efficiency of these areas through nanoelectronics will help to improve the gathering of information, as well as the distribution of information. Other nanotechnology-driven defense applications currently underway include: the collection, transmission, and protection of information; high-performance, high-strength, lightweight military platforms; chemical, biological, and nuclear sensors for homeland protection; nanomechanical and micromechanical devices for control of nuclear and other defense systems; virtual reality systems based on nanoelectronics for effective training; and increased use of automation and robotics.

My research work is in U.S. national interest, and my scientific and professional contributions to the field are recognized internationally. As an expert in nanotechnology, Prof. Richard Lewis in the Department of Material Engineering, Stanford University, said in his recommendation letter that “Dr. Liang is considered an outstanding researcher not only by Stanford University, the International Institute for Nanotechnology, and by myself, but also by the entire international community of researchers in nanotechnology. His research work is in U.S. national interest, and his exceptional research ability can greatly benefit the United States.” (Exhibit 11)

My outstanding scientific contribution to United States' nanotechnology research and development is also highly recognized by Material Research Society (MRS), and I was awarded the MRS Outstanding Achievement Award last year. The award is extremely competitive. Dr.

Victor Golden in Lawrence Livermore National Laboratory wrote in his recommendation letter that, "fewer than 1% of the research experts in the world can receive such a prestigious award. I would like to say that Dr. Liang is an extremely brilliant researcher, who easily outshines his peers with his exceptional research ability in the nanotechnology." (Exhibits 12, 13)

One area that my outstanding research ability can greatly benefit the United States is the study of heat transport and energy conversion in materials and electrical devices at the nanoscale. The practical impacts of nanotechnology in the environment and energy conversion can be found in the development of increasingly efficient technologies. For example, with nanotechnology as an enabling technology, fuel consumption rates for automobiles and airplanes will improve, and lighting will become more efficient. Standard light bulbs currently only yield a seven to eight percent energy conversion rate, meaning that more than 90 percent of the energy going into a light bulb is wasted. Nanotechnology has the potential to change that.

Also, the automotive electronics industry is about \$30 billion per year, and the pressure to keep the cost of devices low is tremendous. Through the enabling technology of nanotechnology, future systems of automobiles may host the ability to electronically avoid collisions, as well as host some form of brake-by-wire, steer-by-wire systems (slowing the car and guiding electrically instead of manually), and allow for the development of sensory systems when new fuel sources become common.

MY RESEARCH IS IN THE U.S. NATIONAL INTEREST, AND THE BENEFITS OF MY WORK ARE NATIONAL IN SCOPE

Recently, I was awarded a Faculty Early Career Development Award (CAREER) from the National Science Foundation, and I will use the \$452,000 grant to study heat transport and energy conversion in materials and electrical devices at the nanoscale. The flow and conversion of energy in nanostructured materials is an unexplored domain which is becoming increasingly important as these materials make their way into electronic devices. Prof. Robert Leman, in the Department of Chemistry at the University of Michigan, indicated that "Dr. Liang's research will benefit the United States in national scope, and it will play a fundamental role in understanding thermal and thermoelectric transport properties in nanoscale materials leading to new devices such as microscale heating and cooling units and commercially viable thermoelectric power generators." (Exhibits 14, 15)

Prof. Paul Edward in the Department of Chemistry, University of California - Los Angeles, stated in his recommendation letter that "Nanotechnology has the potential to become one of the defining technologies of the 21st century, because of its ability to measure, manipulate and organize material on the nanoscale. Dr. Liang's research has many significant implications to the United States and the world, and his contributions to the field in the Raman substrates for biological and chemical sensing has encouraged a dramatic rise in research and development interests in this area, and more expenditure is expected in United States and all developed countries." (Exhibit 16)

Prof. Fred Jordan in the Department of Chemical Engineering, Stanford University, also said that "Particularly, electronics is an area where nanotechnology is making great gains. Dr. Liang's CAREER award and research funded by National Science Foundation will greatly reduce the cost and increase the performance of memory, displays, processors, and embedded intelligence systems in the United States. It will also enable networks to be self-configuring. These improvements would create a pervasive computing environment that could promote greater global communication and cross-cultural understanding and cooperation, and his research

results will greatly benefit the United States and the whole world in the future.” (Exhibit 17)

As described in the National Nanotechnology Initiative Strategic Plan, the vision of nanotechnology is a future in which the ability to understand and control matter on the nanoscale leads to revolution in technology and industry. My research explores both new nanofabrication methods which are able to build nanoelectronic devices, and new nano materials which can be used for nanoelectronics, photonics, disease detection tools, and biological sensing.

There are pressing needs for this kind of studies in the United States, which will generate results that can be readily applied to military technology, commercial manufacturing, and public health care. For these reasons, my research projects have been funded by the Defense Advanced Research Projects Agency, National Institutes of Health, and National Science Foundation. Therefore, my research is in the U.S. national interest, and the benefits of my work are national in scope.

EVIDENCE PURSUANT TO REGULATIONS

My request for a EB2 National Interests Waiver is not based on labor shortage of qualified U.S. workers in my field, but because my work is in an area of substantial intrinsic merit and in U.S. national interest. In order for me to be deemed as an alien working in U.S. national interest, an examination of my qualification is discussed below in depth:

1) M past record of achievements justifies projections of prospective national benefit to the United States National Interest, and I am not seeking a National Interest Waiver based on a shortage of qualified workers in my field

Evidence submitted for this criterion is contained throughout this application, including my publications and citation records. The evidence is also emphasized in the recommendation letters from the leading researchers in the nanotechnology field.

Also, my exceptional ability of scientific research in the nanotechnology field can be proved by my patents, awards, and newspaper reports. With 11 publications in scientific journals, including Science and Proceedings of the National Academy of Sciences (USA), I am highly recognized internationally as a creative, productive, and outstanding scientist. Furthermore, I have filed three

U.S. patent applications based on my research results which serve the U.S. national interest. (Exhibits 18-20).

My original scientific and scholarly research contribution is highly recognized internationally by numerous scientists in the field. Prof. Paul Edward in the University of California - Los Angeles said “ Dr. Liang's paper on Science is terrific, one of the most important ideas I have seen in a while in nanotechnology field, very sensible, very practical, and with enormous potential in devices. This is the only way I can presently think of that might really make nanojunctions. Arranging things will never work, but this could. And, there is lots of room for improvement. To me, this is the most important breakthrough in nanotechnology in a long while.” (Exhibit 16)

Prof. Leman at the University of Michigan also commented on my original scientific contribution, “His approach surpasses most of the current lithographic methods such as photolithography, e-beam lithography, and micro contact printing. Because of his creative work, scientists can obtain an optimized Raman signal, which is extremely useful for biological and chemical detection.” Prof. Leman also indicated that “Overall, Dr.

Liang has proven himself to be an exceptionally productive researcher, and I am confident that his future contributions to U.S. national interests will greatly exceed those of his peers.” (Exhibit 15)

My original scientific and creative method in the research surprised a peer-review expert, and this expert gave me a high praise on my 2005 Science paper (the peer-review is an anonymous process, thus the name of the expert cannot be provided.), “As an expert with 20 years experience in template synthesis, I can say with assurance that this manuscript passes that criterion with flying colors. I have never seen anything like the images in Figure 1. But again, let me emphasize, this is not just whiz bang pretty pictures. As I have belabored above, this technology is also a breakthrough in molecular electronics. I have not, however, yet gotten to the really clever part of this work. Dr. Liang and his colleagues solved this problem by dispersing the segmented wires on a surface, and coating one side with an outer sheath of a nondissolvable material. This outer sheath holds the wire together after removable of the dissolvable segment. All I can say about this is I wish I would have thought of it!” (Exhibit 21)

My exceptional ability and scholarly research contribution were also demonstrated in newspaper and media reports as well. On June 17, 2005 in the New York Times, it was said that “Dr. Fang Liang and other researchers at Stanford University have come up with a process that is simpler and more effective than other techniques developed to date. These researchers are trying to make components from single molecules, which would be much smaller and would enable corresponding reductions in the size of electronic devices. But this emerging field, molecular electronics, faces some significant hurdles, not the least of them the problem of how to connect a single-molecule component to a source of electricity. Since molecules are very tiny - only billionths of a meter long - figuring out how to wire them up has been daunting.” (Exhibit 2)

On June 16, 2005 in Stanford University News Release, it was also said that “Led by Assistant Professor Dr. Fang Liang at the Department of Material Engineering, this method is a feat that is unattainable using conventional lithographic techniques.One problem with nanoscale devices is the difficulty of fabricating and attaching electrodes to their inputs and outputs. Given the diminutive size of single-molecule devices, in particular, researchers may find it challenging enough just to pinpoint the device's location, much less attach an electrode. The Stanford researchers call their technique on-wire lithography (OWL). The resultant structures will allow one to build all sorts of molecule-based devices that will allow one to uncover the fundamental secrets of electrical transport in molecules and develop a variety of new and powerful optical and biological sensors.” (Exhibit 5)

These recommendation letters from experts in the nanotechnology field, my published research papers, and news media reports evidently establish that my original scientific contributions are of major significance to the nanotechnology field. It is also obvious that my work has earned me an international reputation in the nanotechnology community. Therefore, my past record of achievements justifies projections of prospective national benefit to the United States National Interests, and I am not seeking a national interest waiver based on a shortage of qualified workers in my field.

2) My exceptional ability in the academic field is significantly above that ordinarily encountered in the sciences, and I am working on nanotechnology

innovation which serves the U.S. national interest

Evidence submitted for this criterion is a list of 11 publications in my Curriculum Vitae (Exhibit 22), as well as copies of the title pages of my articles published in leading professional journals relevant to the academic field (Exhibits 1, 6, 23-31). I have served as first author for most of the papers.

My research has resulted in peer-reviewed publications in internationally circulated scientific journals, including high impacting journals of Science, Proceedings of the National Academy of Sciences (USA), Journal of the American Chemical Society, Angewandte Chemie International Edition, and well-known journals of Small, Chemistry Letter, Journal of Colloid and Interface Science as well. This is an outstanding publication record for a scientist.

I also filed 3 patent applications based on my research achievements. My research not only significantly contributes to development of nanotechnology, but also has great impact on the U.S. national interests in many areas. My publications have been cited more than 80 times with three of them cited more than 10 times each, and one cited more than 34 times. The citation number keeps growing. (Exhibits 32, 33)

My exceptional authorship of scholarly articles and research accomplishments has been highly praised. Dr. Victor Golden at Lawrence Livermore National Laboratory wrote that "Dr. Liang's scholarly articles in nanotechnology are not only significant for his projects at Stanford University, but also important to U.S. industries and homeland security as well. His extensive knowledge of nanotechnology, molecular electronics and chemical/biological sensing are unparalleled." He also noted that "Dr. Liang is a highly gifted scientist who has unique skills, outstanding abilities, and an internationally recognized reputation in the fields of material science and nanotechnology. His outstanding publication record and novel research will directly and positively impact public health, semiconductor industry, and the effective usage of energy in the United States as a whole." (Exhibit 13)

Prof. Paul Edward at University of California - Los Angeles, an expert in the field of nanomaterial synthesis, biological assay, and biological security, assessed Dr. Liang's performance and wrote: "Dr. Liang is a truly outstanding scientist and a talented researcher who has made significant contributions to the area of nanotechnology, and my argument is supported by his articles published in the professional journals and other major media.... His research papers attest to his excellent conceptual strengths and outstanding research capabilities." (Exhibit 16)

My research was highlighted by lots of journals, newspapers, and conferences internationally as well, such as the New York Times, Materials Today, Chemistry World, Nature Nanotechnology, Chemical & Engineering News, and Stanford University News Release. The following are some comments from the media to show how U.S. public society is appreciating my scientific discovery (Exhibits 2-7):

- i) The New York Times in the article of "Nanowires New Progress" wrote that "A new method to carve infinitesimal gaps into nanowires soon could help scientists connect electronics to single molecules. This in turn could lead to computers based on molecular transistors with vastly greater computing power than conventional machines. Researcher Fang Liang and his colleagues at Stanford University are developing the technique to create notches only 2.5 nanometers wide -- or 2.5

billionths of a meter, the breadth of a DNA molecule -- in gold nanowires, into which a variety of compounds, such as genes, could be plugged.”

ii) Nature Nanotechnology in the article of "Expanding the Molecular Electronics Toolbox" wrote that "Molecular electronics aims to build functional devices on the scale of individual molecules. The development of such devices requires accurate measurement and control of the electronic properties of individual molecules; in practice, this means that electrical "leads" must be attached to two ends of a molecule. The method, called on-wire lithography, is reported by Dr. Fang Liang at Stanford University. It yields nanowires with a gap into which a molecule can in principle be inserted. The method allows the size of the gap to be controlled with high accuracy, removing one obstacle to accurate single-molecule electrical measurements."

iii) Chemical & Engineering News in the article of "Metals with Many Gaps" wrote that "The fabrication of nanostructures is facilitated not only by making small regular structures, but also by forming void spaces that can capture nanomaterials or molecules. For example, in molecular electronics, the formation of metallic gaps can be achieved with scanning probes at surfaces or by drawing metal break junctions. Dr. Fang Liang and his colleagues at Stanford University created bimetallic nanowires with repeating gap structures as small as 5 nanometers"

iv) Materials Today in the article of "A method of splicing nanoscopic wires" wrote that "To create molecular electronic devices, researchers need to insert molecules into a nanoscale gap between electrodes. However, lithography struggles to create gaps <20 nm wide controllably. Dr. Fang Liang's research group at Stanford University has developed 'on-wire lithography', which can produce gaps in nanowires just 5 nm wide. It could enable engineers to make speedy electronic circuits featuring molecular components."

The documentation provided above demonstrates that I am an outstanding scientist with a substantial list of publications in the world's leading journals and other major media. Therefore, my exceptional ability in the academic field is significantly above that ordinarily encountered in the sciences, and I am working on nanotechnology innovation which serves the U.S. national interest.

3) Documentation of my membership in associations in the academic field that require exceptional achievements of their members

As evidence, the submitted documents establish that I am an active member in good standing of two professional societies. These societies require outstanding achievement of their members and require election or invitation as a precursor to full membership. These professional societies are:

- i) American Association for the Advancement of Science (AAAS)
- ii) Materials Research Society (MRS)

I am a full member of American Association for Advancement of Science, a scientific research society, which is one of the largest scientific organizations in the United States. The American Association for Advancement of Science has nearly 40,000 members who were elected to membership based on their research potential or achievements. More than 30 members have won the Nobel Prize. The association's chapters in the United States provide a supportive environment for researcher at universities and industry research centers. (Exhibit 34)

The full membership in AAAS is by nomination, and is only conferred upon an individual who has shown noteworthy achievement as an original investigator in a field of science or engineering. A complete application for active membership consists of the official AAAS membership application form with all requested information provided, including appropriate signatures of two nominators who are existing active, emeritus, or honorary members in good standing.

Also, I am an active member of the Materials Research Society (MRS), which is the world's largest and most prestigious professional organization devoted to material research. The active membership of MRS is only open to investigators worldwide who have conducted at least two years of research resulting in articles in peer-reviewed publications relevant to material and material-related science or engineering, or who have made substantial contributions to material research in an administrative or educational capacity. The MRS has over 15,000 members. (Exhibit 35)

The MRS' purpose is to advance the science of material through publication of scientific and engineering journals, organization of scientific meetings, advocacy for funding of basic research and engineering research, and support of science and engineering education at all levels. The regular membership is only available to an individual who has published at least one paper in a professional journal devoted to material research. Moreover, new regular members must be sponsored by one regular member of the society. The application for regular membership needs to be reviewed and approved by 2 senior members.

4) Documentation of my receipt of major prizes or awards for exceptional achievement in the academic field

I have been awarded a Faculty Early Career Development Award (CAREER) from the National Science Foundation, and I will use the awarded \$452,000 grant to study heat transport and energy conversion in materials and electrical devices at the nanoscale. The CAREER Award is given to faculty members at the beginning of their careers and is one of the NSF's most competitive and prestigious awards, placing emphasis on high-quality research and novel education initiatives. (Exhibit 14)

The CAREER award research funded by National Science Foundation will be used to develop new techniques for measuring electric current and heat transfer properties across various types of nanojunctions where nanotube fibers and metals connect. As computer chips and other electronic devices get smaller and smaller, the flow of heat and energy becomes a more important variable in how efficiently they operate. My research in this area may be applied to the future design and development of nanoelectronics and highly efficient thermoelectric energy conversion devices. One example is temperature control of next-generation computer chips - a task that becomes all the more difficult as the size of computer chips decrease. My research will also be incorporated into the classroom at Stanford University through a combination of course materials, laboratory demonstration experiments, and interactive learning modules. I will also use my research to develop hands-on exhibits in collaboration with the Junior Museum of Palo Alto and create outreach programs with schools throughout the California State.

My outstanding scientific contribution is also highly recognized by the Material Research Society (MRS), and I was awarded the MRS Outstanding Achievement Award last year. The award is highly prestigious and very few research experts in the world can receive such a prominent award. The MRS Outstanding Achievement Award is an extremely competitive award created in 1970 to support the research efforts of promising scientists in the material field.

The MRS Outstanding Achievement Award competition is held once a year to choose the winners. The applicants must have demonstrated productivity in their research, as illustrated by first-author publications in international peer-reviewed journals. The candidates will be judged on prior productivity and the novelty and potential of the proposed project, and a research grant of \$50,000 will be provided to the winners for the purchase of supplies and equipments, as well as for travel to scientific meetings in the continental of United States and in the world.

5) The U.S. national interest would be adversely affected if a Labor Certification were required for me

As amply demonstrated above, my work is in an area of substantial intrinsic merit, and the benefits of my work are national in scope. Also, my ability to perform the duties in my projects is significantly above the peers. My work on nanoelectronics can have significant contributions to U.S. national economy. My research requires a scholar to have a broad, interdisciplinary background in Chemistry, Physics and Materials, and it also requires innovative thinking and creative experimental skills. The Labor Certification is employer oriented employment, it will limit my research activities and employment for different potential employers, and it will also limit my academic communication between experts working for different employers.

Also, I have advanced degrees in chemistry and material engineering, and also have extensive training and experience in nanomaterial synthesis and nanoscale characterization and measurements. My accomplishments have been documented in over 11 research papers, 3 patents, and more than 80 times of citations. The Labor Certification for a specified employer will adversely affected research ability and projects in nanotechnology for other potential employers in the field.

CONCLUSION

I am currently an Assistant Professor in tenure-track at the Department of Material Engineering, Stanford University. My research focuses on the development of nanofabrication method, nanomaterial synthesis application, nanoelectronics, and biological assay. Also, my research is leading to unprecedented understanding of the fundamental building blocks in the physical world, and it will greatly benefits the United States national interests. These developments are likely to change the way almost everything is designed and manufactured, from vaccines to computers, automobile tires, and to objects not yet imagined.

In my years of research in the United States, I invented on-wire lithography which is a new and powerful nanofabrication method, and I developed this method to build new nanoelectrodes which is used to make electronic connections to single molecules. This is a big breakthrough in nanotechnology and will be significantly useful for building next-generation and molecular based machines and computers. My research is in the area of great national interests of United States, as supported by Dr. Victor Golden's letter. "The nanoelectronic device in his Science paper could be used to make electronic connections to individual molecules, which are the most promising prospect for next generation molecular-based computers. This breakthrough will definitely be significant for industrial applications, information technology, and economics, thus benefiting the national interests of the United States."

As demonstrated above, my work is in an area of substantial intrinsic merit, and the benefits of my work are in national scope. Also, my ability to perform the duties in our projects is significantly above many of my peers. My work on nanoelectronics can have significant contributions to U.S. national economy. I also have extensive training and experience in nanomaterial synthesis and nanoscale characterization and measurements. My accomplishments

have been documented in over 11 research papers, 3 patents, and more than 80 times of citations. The potential application of my technique can have a significant contribution to industry, national defense and homeland security of United States. The breakthroughs in my research will have a profound impact to the entire nanotechnology research and development of the United States. As Prof. Paul Edward affirmed in his recommendation letter, "Dr. Liang's work has provided a powerful research tool in the area of nanofabrication and will inevitably promote the advanced technology." He also noted "This high detection ability will eventually be used to detect chemical agents of bioterrorism, toxic gases, and gene-caused disease, and will have immediate applications in United States military and medical industries."

My leading and critical role in nanotechnology is significant not only for our projects at Stanford University, but also important to U.S. industries and homeland security. My extensive knowledge of nanotechnology, spectroscopy, molecular electronics and chemical/biological sensing are excellent. As a director in the International Institute for Nanotechnology, Prof. Richard Lewis wrote that "I feel that the United States has the responsibility to maintain its technological developments and fundamental sciences in the global competition. It would truly be a shame to lose an excellent researcher like Dr. Liang. I believe that he will continue to cultivate his scientific talent in the name of the United States, and will bring his expertise to numerous research projects."

The evidences submitted firmly establish my qualification in the EB2 immigration category of National Interest Waiver. Accordingly, I respectfully request the petition be granted, to award me a U.S. Permanent Residence as an alien with exceptional ability. Enclosed please find the attached materials listed below in the INDEX TO EXHIBITS. The recommendation letters and correspondences from renowned professors and technical leaders prove that I have exceptional ability, and my staying in the United States can be beneficial to the nation from various aspects. Some documents have confirmed the importance of my work and my exceptional performance, and other documents provide proof and recognition of my achievements. I also include Form I-140 petition required fee and documents:

- i) Application fee.
- ii) Filled I-140 form.
- iii) Filled ETA-750 form, Part B, two copies.

Should further information or original copies of these documents be required, please inform me at your earliest convenience. I deeply appreciate your assistance to this application.

Yours Sincerely,

Dr. Fang Liang, Assistant Professor
Department of Material Engineering
Stanford University

INDEX TO EXHIBITS

Exhibit 1: Liang, Fang; Tomas, S.; Huang, L.; Lewis, R., "On-wire lithography", Science, v. 407, n.6831, pp. 223-225, May 5, 2005; and an introduction of Science, SCI citation data of this paper; and two selected scientific articles citing this paper.

Exhibit 2: "Wiring up molecules", The New York Times, June 17, 2005;

Exhibit 3: "Nanonotches: Molecules and nanomaterials could be studied within nanogaps",

Chemical & Engineering News, 83, 8, July 4 2005.

Exhibit 4: "On-wire lithography bridges the gap", Materials Today, 10 September 2005.

Exhibit 5: "A giant step toward tiny functional nanowires", Stanford University News Release, June 16, 2005.

Exhibit 6: Liang, Fang; John, B.; Stein, G. Lewis, R., "Designing, fabricating, and imaging Raman hot spots". Proceedings of the National Academy of Sciences of the United States of America, v. 108, n.56, pp. 13344-13349, October 12, 2006; and an introduction of Proceedings of the National Academy of Sciences of the United States of America, SCI citation data of this paper; and two selected scientific articles citing this paper.

Exhibit 7: "Imaging: Mind the gap", Nature Nanotechnology, October 27, 2006.

Exhibit 8: Executive Summary, National Nanotechnology Initiative: The Initiative and its Implementation Plan NSTC/NSET Report, July 2000.

Exhibit 9: Goals and Plans, the National Nanotechnology Initiative Strategic Plan, December 2004.

Exhibit 10: Executive Summary, the National Nanotechnology Initiative: Research and Development Leading to a Revolution in Technology and Industry, Supplement to the President's FY 2007 Budget, July 2006.

Exhibit 11: Letter of recommendation from Prof. Richard Lewis, in Department of Material Engineering, and a director in the International Institute for Nanotechnology, Stanford University.

Exhibit 12: Offer letter of Materials Research Society's Outstanding Achievement Award, and the introduction of the award, March, 2006.

Exhibit 13: Letter of recommendation from Dr. Victor Golden, Lawrence Livermore National Laboratory.

Exhibit 14: Offer letter of Faculty Early Career Development Award (CAREER) from the National Science Foundation (NSF), and the introduction of the award, January, 2007.

Exhibit 15: Letter of recommendation from Prof. Robert Leman, Department of Chemistry, University of Michigan.

Exhibit 16: Letter of recommendation from Prof. Paul Edward, Department of Chemistry, University of California - Los Angeles.

Exhibit 17: Letter of recommendation from Prof. Fred Jordan, Department of Chemical Engineering, Stanford University.

Exhibit 18: On-wire lithography: High throughput nano gaps and nanorod/disk arrays, a patent filed on June 12, 2005, Stanford University, No: SF 27032.

Exhibit 19: Imaging Raman hot spot: surface enhanced Raman scattering substrates from on-wire lithography, a patent filed on November 19, 2005, Stanford University, No: SF 27058.

Exhibit 20: Universal method for direct patterning nano building blocks and proteins by dip-pen nanolithography, a patent filed on May 14, 2006, Stanford University, No: SF 27097.

Exhibit 21: A copy of peer-review comments of my 2005 Science paper.

Exhibit 22: Current Curriculum Vitae of Dr. Fang Liang.

Exhibit 23: Liang, Fang; Jang, J.-W.; Huang, L.; Lewis, R., Sub-5 nm Gaps Prepared by On-

Wire Lithography: Correlating Gap Size with Electrical Transport. *Small*, v. 14, in press, 2007.

Exhibit 24: Liang, Fang; Wolman, L. X.; Zhang, X., Controlled evaporation as an easy method of constructing novel nano objects from amphiphilic diblock molecules. *Chemistry Letters*, v. 38, n.5, pp. 370-371, April 15, 2004.

Exhibit 25: Liang, Fang; Wolman, L. X.; Qiu, D. L.; Shen, J. C., Monolayer formation and in-plane anisotropy of an amphiphilic block molecule. *Chemistry Letters*, v., n.9, pp. 840-843, June 14 2003.

Exhibit 26: Payne, E. K.; Liang, Fang; Lewis, R, Multisegmented one-dimensional nanorods prepared by hard-template synthetic methods. *Angewandte Chemie-International Edition*, v. 45, n.38, pp. 3472-3492, 2006.

Exhibit 27: Shuford, K. L.; Liang, Fang; Stein, G. C., Observation of a quadrupole plasmon mode for a colloidal solution of gold nanoprisms. *Journal of the American Chemical Society*, v. 337, n.15, pp. 5812-5813, April 24, 2004.

Exhibit 28: Song, B.; Liang, Fang; Wolman, L. X.; Shen, J. C., Self-assembly and micellization of amphiphilic rod-coil block oligomer at the mica-water interface. *Journal of Colloid and Interface Science*, v. 360, n.2, pp. 957-963, October 5, 2006.

Exhibit 29: Liang, Fang; Xu, M.; Wolman, L. X.; Shen, J. C., Self-assembling structures and thin-film microscopic morphologies of amphiphilic rod-coil block oligomers. *Journal of Colloid and Interface Science*, v. 589, n.5, pp. 788-797, September 15, 2006.

Exhibit 30: Wolman, L. X.; Liang, Fang; Wang, C. S., Self-assembly and Langmuir-Blodgett (LB) film of a novel hydrogen-bonded complex: a surface enhanced Raman scattering (SERS) study. *Colloids and Surfaces a-Physicochemical and Engineering Aspects*, v. 598, pp. 335-340, February 28, 2003.

Exhibit 31: Liang, Fang; Sun, J. Z.; Shen, J. C., Synthesis and self-assembly of rod-coil diblock molecules of oligophenylenevinylene-poly (ethylene oxide). *Chemistry Letters*, v., n.2, pp. 886-887, June 5, 2001.

Exhibit 32: Table of Dr. Fang Liang's citation report, based on Science Citation Index (SCI).

Exhibit 33: List of 80 papers that cited Dr. Fang Liang's work.

Exhibit 34: Dr. Fang Liang's membership certificate for American Association for the Advancement of Science (AAAS), the scientific research association, and an introduction of the association and membership.

Exhibit 35: Dr. Fang Liang's membership certificate for Materials Research Society (MRS), the scientific engineering research society, and an introduction of the society and membership.

6. Sample of Petition Cover Letter 2 for Form I-140 Immigration of EB2 NIW

This petition cover letter is written in the format of self-petition, but it can be easily changed to an employer sponsored petition

<The Date>

USCIS Nebraska Service Center
P.O. Box 87140
Lincoln, NE 68501-7140

RE: Form I-140 Immigration Petition for Dr. Ravi Shetty, in EB2 National Interest Waiver

Dear Sir/Madam:

This is to file a Form I-140 immigration petition for myself in the EB2 immigration category of National Interest Waiver, with the waiver of Labor Certification. Enclosed please find an I-140 form, application fee, and supporting documents. Your help to my petition is greatly appreciated.

INTRODUCTION

I currently hold H-1B status, and I am employed by the Department of Carcinogenesis at Woody Cancer Center, School of Medicine, New York University, on a full-time basis as a postdoctoral fellow. The Woody Cancer Center is one of the world's most respected centers devoted exclusively to cancer research. As recognition of my outstanding research performance and contributions to the field, I was awarded a highly competitive Higgins Fellowship by New York University School of Medicine for the last two years (Exhibit 1).

I am qualified for the offered position due to my outstanding research ability, unique set of research skills, professional experience, and strong educational background in both biochemistry and molecular biology. As a leading researcher in the chromatin field, I am currently investigating the functions of chromatin remodeling complexes in the DNA repair, which is a major defense against environmental damage to cells.

My exceptional research performance attributes to my education and self-motivation. After receiving my B.S. degree in Molecular Biology from the highly prestigious Indian Institute of Technology at Kharagpur in 1994 (Exhibit 2), I worked three years as a researcher at Bangalore Biotechnology Inc., which is a leading enterprise in the industrialization of recombinant products in India (Exhibit 3). During this period of time, I performed research for intermediate products of Interferon- γ human recombinant, and I also did the research and development of a new dosage form for this product.

Thereafter, I went to the United States to get my MS degree in Biochemistry and Molecular Biology from University of Rochester (Exhibit 2). During my study at University of Rochester, I demonstrated that the Amyloid Precursor Protein (APP), which is the key molecule involved in Alzheimer's disease, is directly involved in cell transformation. This finding provides new insight into pathogenesis and treatment of Alzheimer's disease. Furthermore, I played a crucial role in establishing a new method for isolating differentially expressed gene. Both of these studies were presented at the 10th International Congress on Genes, Gene Families and Isozymes (Exhibit 4).

In May 2006, I obtained my Ph.D. degree in Biochemistry and Molecular Biology from Columbia University. I was awarded a Graduate Research Assistantship for five consecutive years, which is a major prize for outstanding graduate student researchers. As a leading researcher in Prof. Matthew Rowell's laboratory, I played a key role in several research projects focused on nucleosome structure and chromatin dynamics. I demonstrated my exceptional research ability by making significant contributions to the field, and published excellent research results at several prestigious national and international scientific magazines.

For example, during my PhD research, I conducted structural and functional studies of the Nucleosome Core Particles containing histone Sin mutant. This research project was supported by NIH Grant 62704. The so-called Sin (Swi-Independent) mutations in the genes for histones H3 and H4 partially alleviate the transcription defects caused by the inactivation of the yeast chromatin remodeling factor SWI/SNF. I tested the different hypotheses by which histone Sin mutations may overcome an SWI/SNF deficiency by determining the crystal structures of

nucleosome core particles (NCPs) reconstituted with histones bearing the original Sin mutants, and by analyzing the stability and sliding properties of mutant NCPs in solution. I found that the disruption of only 2 to 6 of the ~ 120 direct histone-DNA interactions within the nucleosome has a pronounced effect on nucleosome mobility and stability. This study has implications for our understanding of how these structures are made accessible to the transcription, replication and repair machinery. This important discovery was published in the prestigious Journal of Biological Chemistry, and has been cited 11 times by fellow researchers (Exhibit 5).

As a postdoctoral fellow at New York University presently, I am studying the optimization of the method for reconstitution nucleosome core particles from recombinant histones and DNA. Some of the optimized methods have been published in Methods Enzymology, which is a prestigious research experimental method journal, and has been cited 13 times so far by fellow researchers. This paper provides detailed description of experimental methods to the field (Exhibit 6).

With three years of industry experience, more than ten years of research experience, and a PhD degree in Biochemistry and Molecular Biology, I have made excellent accomplishments in all the research projects that I participated, and made significant contributions to the field. I also have published 15 research papers in several prestigious journals, and my research results have been cited 51 times so far by scientists from more than 10 countries (Exhibits 15, 16).

In summary, I have established myself as an outstanding researcher in the field of nucleosome structure and chromatin dynamics. I have also contributed several important discoveries in the field, and have accumulated evidence that clearly shows that I am an outstanding scientist in the field. My academic credentials and past achievements have demonstrated that I am an outstanding researcher and have influenced the field significantly. Therefore, I have established that I have a past record of specific prior achievement that justifies projections of future benefit to the U.S. national interest.

EVIDENCE PURSUANT TO THE EB2 NATIONAL INTEREST WAIVER REGULATIONS

According to a published precedent decision, Matter of N.Y. State Department of Transportation (NYSDOT), Interim Decision No. 3363 (Acting Assoc. Comm'r Aug. 7, 1998), which translated "National Interest" into a set of conceptual guidelines, and generally asks an alien applicant to prove the eligibility for the National Interest Waiver petition according to the three-prong test setup in the case of NYSDOT:

- (1) The applicant must be working in an area of "substantial intrinsic merit;"
- (2) The proposed benefit has to be "national in scope;"
- (3) The petitioner seeking the waiver must persuasively demonstrate that he or she will serve the national interest to a substantially better degree than would an available U.S. worker having the same minimum qualifications, and the national interest would be adversely affected if a labor certification were required for the beneficiary.

My research work and my scientific contributions in the field can be useful to protect life and bring great benefits to the national interests of the United States. In order for an applicant to qualify for EB2-National Interest Waiver petition, the immigration regulations require that the alien applicant must meet criteria outlined in the regulations. In the following sections, I will provide evidence to demonstrate that I meet all the eligibility requirements of EB2-National Interest Waiver in the three-prong test, which clearly indicates that I am an alien with exceptional ability in medical science and research, and my permanent residence in the United

States is in the U.S. National Interest.

1) Evidence of my employment in an area of substantial intrinsic merit

United States gives great importance to improve healthcare system by biomedical research funding through the National Institutes of Health (NIH) and National Science Foundation (NSF). I strongly believe that more than ten years of my comprehensive experience and my talents in the biomedical research will greatly benefit this country, and my employment is in an area of substantial intrinsic merit. The DNA repair is involved in processes that minimize cell killing, mutations, replication errors, persistence of DNA damage, and genomic instability. The abnormalities in these processes have been implicated in cancer, and I have made significant scientific contributions in the field.

According to American Cancer Society's (ACS) annual report, cancer is the second most common cause of death in the United States, and it killed an estimated more than half a million Americans in last year, or more than 1500 people a day. Cancer is a group of diseases characterized by uncontrolled growth and spread of abnormal cells. If the spread is not controlled, it can result in death. Cancer is caused by both external factors (tobacco, infectious organisms, chemicals, and radiation) and internal factors (inherited mutations, hormones, immune conditions, and mutations that occur from metabolism). These causal factors may act together or in sequence to initiate or promote carcinogenesis.

Ten or more years often pass between exposure to external factors and detectable cancer. Cancer is treated with surgery, radiation, chemotherapy, hormone therapy, biological therapy, and targeted therapy. The American Cancer Society estimates that in 2009 about 169,000 cancer deaths are expected to be caused by tobacco use. Scientific evidence suggests that about one-third of the 562,340 cancer deaths occurred in 2009 was related to overweight or obesity, physical inactivity, and poor nutrition.

I have played a crucial role in a number of projects supported by National Institute of Health and American Cancer Society, because of my exceptional research ability. I am also the most productive researcher in both my previous research lab at Columbia University and the current research lab at New York University School of Medicine.

My current research projects at the Woody Cancer Center of New York University School of Medicine include the investigating the function of ATP-dependent chromatin remodeling complexes in regulation of the activities of ATM, which is one of the key players in DNA repair pathways. This project is sponsored by the American Cancer Society (ACS), and the project grant number is "RSG-05-060-01-GMC". This research will provide insights into the mechanisms underlying the carcinogenesis related to the DNA repair. According to our previous research results, we have suggested that blocking the activity of ATM might make most types of tumor much more sensitive to radiation therapy. Thus, this research has far-reaching implications for the development of cutting-edge therapies for cancer. It will greatly benefit millions of cancer sufferers both in the United States and in other countries.

My another project is investigating the structure and function of actin/ARP (Actin Related Protein) modules in chromatin remodeling complexes. This project is sponsored by the National Institute of Health. Although actin is one of the most important and evolutionarily conserved molecules of the cell, its functions in the cell nucleus remain poorly defined. This project is important for understanding the functions of actin and ARPs in the nucleus, and it will provide fundamental insights into the mechanisms of chromatin modifications during DNA repair. As a project leader, our research has made significant progress and I have published 3 papers at the

prestigious scientific journals, including Cell, which is a premier journal in life science field. (Exhibit 7).

Evidence submitted for the criterion of my employment in the area of substantial intrinsic merit is contained throughout this application, including my publications and citation information. The evidence is also emphasized in the recommendation letters from the leading researchers in the field. For example, as one of the nation's foremost chromatin scientists and an independent expert, Prof. Brian Garacci from Harvard University School of Medicine provided his professional opinion about my work's intrinsic merit and my scientific contribution to the field. In his recommendation letter, Prof. Brian Garacci said that "Dr. Shetty and his colleagues found a novel role for Nucleosome Assembly Protein 1 (NAP-1) in mediating chromatin fluidity by incorporating histone variants and assisting nucleosome remodeling. This work is extremely important in understanding the mechanism of nucleosome assembly, and has been widely followed by many researchers all over the world in their own research projects. Dr. Shetty is a well established and productive researcher, as demonstrated by his well cited papers published in primary professional and international journals. In particular, he is a leading researcher in the field of nucleosome structure and dynamics, which currently constitutes a critical area of biological research." (Exhibit 8)

In a recommendation letter from Prof. Matthew Rowell who is a professor in Biochemistry at Columbia University, Prof. Rowell wrote that "Dr. Shetty made several important original contributions in characterizing effects of histone variants on chromatin dynamics. He discovered that the incorporation of histone variant called H2A.Bbd into a nucleosome alters the conformation of the nucleosome in a manner that facilitates the DNA transcription process. This study provided important evidence for the emerging theory that incorporation of a histone variant into a nucleosome is an alternative way to modulate chromatin structure in addition to histone modifications. This work was one of such great importance that it was quickly accepted for publication in the highly cited biomedical journal, EMBO Journal. Dr. Shetty is a highly creative researcher with a solid record of achievement. I believe that his employment is in an area of substantial intrinsic merit, and his contribution to DNA research will benefit U.S. healthcare in national scope." (Exhibit 11)

These recommendation letters from experts in the field, my published research papers, and other attached documents clearly establish that my employment is in an area of substantial intrinsic merit, and my original scientific contributions are of major significance to the nucleosome and chromatin research field. It is also obvious that my work has earned me a national and international reputation in the chromatin research community. Therefore, my work focusing on basic research of DNA repair and cancer is in U.S. national interest, and it is in an area of substantial intrinsic merit.

2) Evidence of the proposed benefit has to be national in scope

My research work has great significance to the advancement of knowledge towards understanding the causative factors and mechanisms involved in DNA and cancer processes, and it points to the ways of finding a cure for those who suffer from severe dysfunction.

As we know, all cancers involve the malfunction of genes that control cell growth and division. About 5% of all cancers are strongly hereditary, in that an inherited genetic alteration confers a very high risk of developing one or more specific types of cancer. However, most cancers do not result from inherited genes but from damage to genes occurring during one's lifetime. Genetic damage may result from internal factors, such as hormones or the metabolism of nutrients within

cells, or external factors, such as tobacco, chemicals, and sunlight.

Certain cancers are related to infectious agents, such as hepatitis B virus (HBV), human papillomavirus (HPV), human immunodeficiency virus (HIV), *Helicobacter pylori* (*H.pylori*), and others, and could be prevented through behavioral changes, vaccines, or antibiotics. In the United States, men have slightly less than a 1 in 2 lifetime risk of developing cancer; for women, the risk is a little more than 1 in 3. According to American Cancer Society's statistics number, approximately 1.4 million people were diagnosed with cancer in the United States in year 2009, and the overall cost of cancer in 2009 alone is about \$230 billion. Thus, my work focusing on basic cancer research is in U.S. national interest, and the proposed benefit is national in scope.

I have made significant scientific contributions in chromatin and DNA repair research. For example, in the eukaryotic cells, such as a human cell, DNA is tightly packed together with proteins into a complex called chromatin. The fundamental subunit of chromatin is a nucleosome, which is made up of a disk of histone proteins surrounded by DNA. The chromatin is important for regulating gene expression, and numerous diseases have been found to be caused by mutations in genes involved in the maintenance and remodeling of chromatin structure. Hence, an understanding of nucleosome structure and chromatin dynamics is essential for the design of rational approaches to disease treatment. The followings are a summary of 2 research projects that I finished at Columbia University and New York University:

Structural and functional studies of the Nucleosome Core Particle (NCP) containing histone variant H2A.Bbd (finished at Columbia University): This research project was sponsored by National Institute of Health (NIH) grant 61909 and by the Human Frontier Science Program. The H2A.Bbd is an unusual histone variant, and its sequence is only 48% conserved compared to major H2A. I assembled nucleosomes in which H2A is replaced by H2A.Bbd (Bbd-NCP) and found that Bbd-NCP had a more relaxed structure in which only 118 ± 2 bp of DNA are protected against digestion with micrococcal nuclease. Then, it was determined that this behavior was caused mainly by the Bbd docking domain. I further found that Bbd-containing nucleosomal arrays repress transcription less efficiently than chromatin reconstituted with major-type histones. This remarkable discovery was published in the highly cited European Molecular Biology Organization (EMBO) Journal and has been cited 12 times by fellow researchers (Exhibit 9)

In this project, I also studied the structural and function of the NCP containing poly (dAdT) element. The poly (dAdT) elements have been suggested to promote transcriptional activation by altering the stability or dynamics of nucleosomes. In order to study the role of poly (dAdT) elements on nucleosomal DNA structure, I investigated the stability and crystal structure of a nucleosome core particle containing a 16 base pair poly (dAdT) element (A16 NCP) and found that interactions between the nucleosomal DNA ends and the histone octamer were destabilized in A16 NCPs. The A16 NCP was crystallized and the crystal structure was refined at 3.2 Å. This A16 NCP structure revealed that the overall structure was maintained except for some local structural alteration, especially in the poly (dAdT) region. This study not only demonstrated how incorporation of a specific DNA element can alter nucleosome structure and can further influence gene expression, but has also provided the foundation for further studies by other researchers in the chromatin field. These results were published in Journal of Molecular Biology, a leading journal in the field (Exhibit 10).

The importance of my discovery is emphasized in the recommendation letters written by experts

in the field. For example, Prof. Matthew Rowell of Columbia University stated that "Dr. Shetty's discovery can benefit U.S. medical research and healthcare in national scope. His research discovery has provided a very important evidence for the emerging theory that incorporation of a histone variant into a nucleosome is an alternative way to modulate chromatin structure, in addition to the histone modifications." Prof. Rowell also stated that "Remarkably, Dr. Shetty discovered that the nucleosome containing histone variant H2A.Bbd possesses a loose structure and protects shorter DNA. This research is important to the understanding of transcription regulation and chromatin dynamics, and was published in EMBO Journal. Papers published in this top journal of biomedical science are critically evaluated for compliance with the following criteria: novelty, broad biological significance, importance to the specific field, and strong evidence for the conclusions that are drawn." (Exhibit 11).

Structural and functional studies of NAP-1 (Nucleosome Assembly

Protein 1, Finished at Woody Cancer Center of New York University

School of Medicine): This research project was supported by NIH

grant RGM067777A. The NAP-1 is an acidic histone chaperone

protein and has been implicated in histone transport and

chromatin assembly. In this project, I found that NAP-1

reversibly removes and replaces histone H2A-H2B or histone

variant dimers from assembled nucleosomes, resulting in active

histone exchange. Furthermore, I also discovered that transient

removal of H2A-H2B dimers facilitates nucleosome sliding along

the DNA. Our research results suggest a novel role for NAP-1 in

mediating chromatin fluidity by incorporating histone variants

and assisting nucleosome sliding. These important results were

published in Journal of Biological Chemistry and have been cited

12 times by fellow researchers (Exhibit 12).

Also, I studied the reconstitution of 'hybrid' nucleosome core particles in this project. It is theoretically possible to have a nucleosome in which only one of the H2A moieties has been replaced by its corresponding variant, resulting in a nucleosome with one (H3-H4)₂ tetramer, one major H2A-H2B dimer, and one variant H2A-H2B dimer. To investigate this possibility, I performed salt-gradient reconstitutions with mixtures of (H3-H4)₂ tetramer, (H2A-H2B) dimers, and H2A.Z-H2B dimers. I discovered that while all histone H2A variants are capable of forming 'hybrid' nucleosomes, the propensity to do so clearly differs between macro H2A, H2A.Z, and H2A.Bbd. My research clearly indicates the possibility that variants may be combined with major-type histone H2A in a single nucleosome, thus generating yet another level of structural and functional heterogeneity. The results of this research were published in Cold Spring Harbor Symposium on Quantitative Biology, which is a prestigious biomedical journal, and the paper has been cited 9 times by other researchers all over the world (Exhibit 13).

Prof. David Godman, an independent expert and the head of Laboratory of Chromatin Biology at the Boston University, wrote in his reference letter that "Dr. Shetty's research on the role for NAP-1 in mediating chromatin fluidity is very helpful to my own research in this field. Dr. Shetty has performed cutting edge research and made significant contributions to the chromatin

field, and his research will benefit the United States' healthcare in national scope. He has presented original work at several national and international conferences, such as Keystone Symposia and American Society of Biochemistry and Molecular Biology (ASBMB) annual meeting. As an outstanding scientist in the chromatin field, Dr. Shetty has published a number of articles in leading journals providing expert opinions, judgments, and detailed description of experimental methods to the field. Dr. Shetty's work is thus clinically important in leading up to an early diagnosis of the disease, and the proposed benefit of Dr. Shetty's employment will be national in scope" (Exhibit 13).

3) The petitioner seeking the waiver must persuasively demonstrate that he or she will serve the national interest to a substantially better degree than would an available U.S. worker having the same minimum qualifications

I am seeking the National Interest Waiver because I can serve the national interest of United States to a substantially better degree than would an available U.S. worker having the same minimum qualifications. As demonstrated by the submitted documents, I have published excellent articles, and these articles have been widely cited by other researchers in the field. Also, my articles were all published in prestigious and highly selected peer-reviewed journals and peer-reviewed international conferences. For instance, Journal of Molecular Biology and European Molecular Biology Organization Journal only publish articles by top talents in the field.

Evidence submitted for this criterion also includes a list of 15 publications in my Curriculum Vitae, a recent collected citation search report of 51 independent citations by scientists and researchers all over the world, as well as copies of the title pages for my articles published in leading journals relevant to the academic field. The list of my publications is long, and I have served as first author for most of the papers. (Exhibit 15-23)

Also, my productivity and the importance of my research work are noted by several professors and independent experts in their recommendation letters written on my behalf. For example, Prof. Joern Wettern, an independent expert from Cornell University School of Medicine, stated in his reference letter that "Dr. Shetty is a well established and productive researcher, as demonstrated by his widely cited papers published in leading professional and international journals." (Exhibit 24)

As an indication of my exceptional ability in science, I am an active member in good standing of three professional societies. These societies require outstanding achievement of their members and require election or invitation from precursors to full membership. I am a full member of Sigma Xi, a scientific research society, which is one of the oldest and largest scientific organizations in the world. The Sigma Xi has nearly 60,000 members who were elected to membership based on their research potential or achievements. More than 200 members have won the Nobel Prize. The Sigma Xi chapters in North America and around the world provide a supportive environment for interdisciplinary research at universities, industry research centers, and government laboratories. The full membership in Sigma Xi is by nomination, and is only conferred upon an individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science or engineering. This noteworthy achievement must be evidenced by publication as a first author on two articles published in refereed journals, patents, or a thesis or dissertation (Exhibit 25).

I am also an active member of the American Association for Cancer Research (AACR), which is the world's largest and most prestigious professional organization devoted to cancer research.

The active membership of AACR is only open to investigators worldwide who have conducted at least three years of research resulting in articles in peer-reviewed publications relevant to cancer and cancer-related biomedical science, or who have made substantial contributions to cancer research in an administrative or educational capacity. A complete application for active membership consists of the official AACR membership application form with all requested information provided, including appropriate signatures of two nominators who are existing active, emeritus, or honorary members in good standing (Exhibit 26)

Furthermore, I am a regular member of the American Society for Biochemistry and Molecular Biology (ASBMB), which is a scientific and educational organization with over 11,900 members. The Society's purpose is to advance the science of biochemistry and molecular biology through publication of scientific and educational journals, organization of scientific meetings, advocacy for funding of basic research and education, support of science education at all levels, and promoting the diversity of individuals entering the scientific workforce. The regular membership is only available to an individual who holds a doctoral degree and who has published, since receipt of the doctoral degree, at least one paper in a refereed journal devoted to biochemistry and molecular biology. Moreover, new regular members must be sponsored by one regular member of the society. The application for regular membership needs to be reviewed and approved by the executive officer (Exhibit 27).

I am also the winner of nationally recognized award for excellence in the field of endeavor. I have been a Higgins Fellow sponsored by the Woody Cancer Center of New York University School of Medicine for the last two years (Exhibit 1). The Higgins Fellow is a highly prestigious and competitive award created in 1990 to support the research efforts of promising recent graduates who will receive their postdoctoral training under the guidance of a faculty member of the Woody Cancer Center. The award competition is held once a year to choose the winners. The applicants must have demonstrated productivity in their graduate studies, as illustrated by first-author publications in international peer-reviewed journals. The candidates will be judged on prior productivity and the novelty and potential of the proposed project. The Higgins Fellow receives salary support and fringe benefits at a rate 20% above NIH guidelines. Also, a research allowance of \$20,000 per year will be provided to the Higgins Fellow for the purchase of supplies and small equipments, as well as for travel to scientific meetings in the continental of United States.

In summary, I have published excellent articles, and these articles have been widely cited by other researchers in the field. Also, my articles were all published in prestigious and highly selected peer-reviewed journals and peer-reviewed international conferences. In addition, I am the winner of Higgins Fellow for last two years, and I am an active member in good standing of three professional societies, which require outstanding achievement of their members and require election or invitation from precursors to full membership. The submitted persuasive documentary evidence proves that I have made significance contributions in the field, and I can and will serve the U.S. national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications, and also than other individuals having similar credentials in the field.

4) The petitioner seeking the waiver must persuasively demonstrate that the national interest would be adversely affected if a labor certification were required for the beneficiary

As demonstrated in the above paragraphs, my research work is in an area of substantial intrinsic

merit to the U.S. national interest, and I have been leading my projects and play a significant role in these projects. I also published first-authored articles in peer-reviewed prestigious journals and gave presentations in the national and international reputed conferences. The benefits of my work are national and international in scope. Furthermore, I have established a track record of past success and achievements that would provide a strong assurance of future benefits to the United States.

Currently, I am leading several projects to find the optimization of the method for reconstitution nucleosome core particles from recombinant histones and DNA. The projects I am working on require the person involved with a comprehensive knowledge in biology, medical science, and experiment techniques, and they also require the person involved with strong analytic ability, innovative thinking, and exceptional creativity.

There is no certain way to quantify these requirements and qualifications for my current position. In another word, the labor certification process does not work for this position since the criteria to qualify for it cannot be quantified. I have PhD degree and extensive research experience in the field. My past track records have demonstrated my outstanding academic accomplishments, exceptional research ability, and innovative creativity. Through my experience, education and training, I have acquired the research skills that uniquely fit me for this ongoing research and enable me to make an irreplaceable contribution.

The reason I am seeking a National Interest Waiver is based on my research projects which are of great importance in the U.S. national interest – healthcare and people's life. As shown by the submitted documents and above demonstration, the projects which I am conducting on and my future career in the biomedical research are highly relevant to the national interest of the United States.

The type of work I am doing requires all of my attention on the research projects, and the constant attention to both my temporary visa status and the long process of labor certification is certainly a distraction from my projects. As a persistent researcher, the granting of my petition for U.S. permanent resident will allow me to continue my vital research and development, and will also help me to obtain even greater achievement in my career. Therefore, my continued efforts in my project will continuously and prospectively benefit the United States. The labor certification process would undermine these important research projects and will cause significant delays, which in turn is not in the U.S. national interest.

Moreover, in the world of rapidly changing information and technology, the nature of my work requires me to be able to freely communicate and collaborate with other colleagues in the same field nationally and internationally. Also, I should be able to engage in other research and development projects in different laboratories or even in different fields if necessary. The labor certification procedure is lengthy and employer-oriented. So it would limit my research and ability to work only for the sponsored employer, which will impair my academic freedom, scholar communication, and potential job change for better opportunity to serve the U.S. national interest if the labor certificate were required.

CONCLUSION

My permanent residence in the United States would greatly contribute to the nation's prosperity and the next generation of science and medicine. The attached evidence shows that I come to the United States to work in the area of my expertise, and my exceptional ability and technical skills are essential to the current research projects at the New York University School of Medicine.

I have played a crucial role in a number of projects supported by National Institute of Health and American Cancer Society, because of my exceptional research ability. I am also the most productive researcher in both my previous research lab at Columbia University and the current research lab at New York University School of Medicine. I have published 15 peer-reviewed papers during my Ph.D. study and my postdoctoral research. Most of them were published in top ranked national and international journals in the field. The fact that I am one of the leading scientists in the chromatin research field is evidently demonstrated by my research results and publications.

Currently, I am a postdoctoral fellow in the Department of Carcinogenesis at Woody Cancer Center, New York University School of Medicine, which is one of the world's most respected centers devoted exclusively to cancer patient care, research, education and prevention. The Woody Cancer Center now ranks first in the number of grants awarded and total amount of grants given by the National Institute of Health, National Cancer Institute, and American Cancer Society. The research program in Woody Cancer Center is considered one of the most productive efforts in the world aimed solely at cancer research.

The investigation of nucleosomes and chromatin requires theoretical knowledge, practice skill, and careful attention to detail. In all of these areas, I have demonstrated my exceptional research ability. I have become an expert in both knowledge and the techniques used in the field, such as molecular cloning, protein purification, nucleosome reconstitution, fluorescence resonance energy transfer, analytical ultracentrifugation, and x-ray crystallography. I also have the excellent ability to conduct research efficiently by myself or by collaboration when it is necessary. I am also a recipient of highly prestigious award.

As shown above, I also submitted independent reference letters to demonstrate that other researchers have been paying attention to my work and putting it to use in their own projects. The USCIS has given much weight to independent evaluations in its determination of whether or not the applicant's work has been particularly significant and influential in the field, because the independent letters of recommendation are evidence that other researchers well outside of an alien applicant's own circle of collaborators and superiors have followed the applicant's work with particular interest. In my situation, I have produced research results that the scientific community outside my university and collaborators/superiors deems to be of special significance.

Presently, I am working in the United States with an H-1B visa. As explained previously, I am an outstanding researcher, and my research can greatly benefit the United States. Thus, my permanent residence in the United States would significantly contribute to United States' next generation of science and medicine, and contribute to the nation's prosperity. Therefore, I am applying for permanent residence in the United States in the EB2 category of National Interest Waiver, with the waiver of Labor Certification. The submitted documents establish my qualification for this immigration category, and I hope that my permanent residence petition will be granted.

Enclosed please find the attached materials listed below in the INDEX TO EXHIBITS. The recommendation letters and correspondences from renowned professors and technical leaders prove that I have exceptional ability and my permanent stay in the United States can be beneficial to the nation from various aspects. Some documents have confirmed the importance of my work and my exceptional performance, and other documents provide proof and recognition of my achievements. I also include Form I-140 petition required fee and documents:

- (1) Application fee.
- (2) Filled I-140 form.
- (3) Filled ETA-750 form, Part B, two copies.

If you have any question or need further information, please let me know at your earliest convenience or call me at (123) 123-4567. I deeply appreciate your assistance to this application.
Yours Sincerely.

Ravi Shetty, Ph.D
Higgins Fellow
Woody Cancer Center, New York University School of Medicine.
Department of Carcinogenesis

INDEX TO EXHIBITS

Exhibit 1: Offer letter and reappointment letter of Higgins Fellowship by New York University School of Medicine for last two years. Also include: the introduction of Higgins Fellowship and NIH salary guide for postdoctoral fellows.

Exhibit 2: Academic degrees of Dr. Ravi Shetty, and overviews of the Institutions.

Exhibit 3: Overview of Bangalore Biotechnology Inc., India.

Exhibit 4: Published abstracts in 10th International Congress on Genes, Gene Families and Isozymes, Oct.1999, New York City, USA, "Investigation of the Role of Amyloid Precursor Protein During Cell Transformation", and "Identification of the Genes Involved in the Cell transformation".

Exhibit 5: Title page of article published in Journal of Biological Chemistry, "Crystal structures of histone Sin mutant nucleosomes reveal altered protein-DNA interactions", 493(5), 983-89, 2007; and SCI citation data of this paper; two selected scientific articles citing this paper.

Exhibit 6: Title page of article published in Methods Enzymology, "Reconstitution of nucleosome core particles from recombinant histones and DNA" Vol. 675, 43-49, 2009; and an introduction of the journal; SCI citation data of this paper; and two selected scientific articles citing this paper.

Exhibit 7: Title page of article published in Cell, "Asf1, a Loveseat for a Histone Couple", Vol. 175, 978-983, 2010; and an introduction of the journal.

Exhibit 8: Letter of recommendation from an independent expert, Prof. Brian Garacci, Professor of Biochemistry and Molecular Biology, Harvard University School of Medicine.

Exhibit 9: Title page of article published in European Molecular Biology Organization Journal, "Nucleosomes containing the histone variant H2A.Bbd organize only 118 base pairs of DNA", Vol. 27, 2006; and an introduction of the EMBO journal; SCI citation data of this paper; and two selected scientific articles citing this paper.

Exhibit 10: Title page of article published in Journal of Molecular Biology, "Nucleosome core particles containing a poly(dA.dT) sequence element exhibit a locally distorted DNA structure", 363(8), 817-24, 2007; and an introduction of the Journal of Molecular Biology.

Exhibit 11: Letter of recommendation from Prof. Matthew Rowell, Professor of Biochemistry, Columbia University.

Exhibit 12: Title page of article published in Journal of Biological Chemistry. "Nucleosome assembly protein 1 exchange histone H2A-H2B dimmers and assists nucleosome sliding", 382, 1618-26, 2009; and an introduction of the Journal of Biological Chemistry, SCI citation data of

this paper; and two selected scientific articles citing this paper.

Exhibit 13: Title page of article published in Cold Spring Harbor Symposium on Quantitative Biology, "Structural Characterization of histone H2A variants", Vol. 78, 428-35, 2010; and an introduction of the journal; SCI citation data of this paper; and two selected scientific articles citing this paper.

Exhibit 14: Letter of recommendation from an independent expert, Prof. David Godman, Head of Laboratory of Chromatin Biology at the Boston University.

Exhibit 15: Current Curriculum Vitae of Dr. Ravi Shetty.

Exhibit 16: A recent collected citation search report of 51 independent citations by other scientists and researchers all over the world.

Exhibit 17: Title page of article published in Protein Expression and Purification, "Bacterial expression, purification, and characterization of rat kidney-type mitochondrial glutaminase", Vol. 34, 240-248, 2005; introduction of the journal; SCI citation data of this paper; and two selected scientific articles citing this paper.

Exhibit 18: Title page of article published in Ernst Schering Res Found Workshop, "Nucleosome structure and function", Vol. 59, 47-56, 2006; introduction of the journal.

Exhibit 19: Title page of article published in The International Journal of Life Science Method, "Recent advances in the research of Presenilins' function", Vol. 15, 417-420, 2008; introduction of the journal.

Exhibit 20: Title page of article published in Journal of Urban Environment and Urban Ecology, "Environmental effects on the cause of Alzheimer's Disease.", 18, 73-75, 2009; introduction of the journal.

Exhibit 21: Title page of in press article in Cell, "ATP-dependent chromatin remodeling complexes"; and introduction of the journal.

Exhibit 22: Title page of in press article in Mutation Research, "INO80 subfamily of chromatin remodeling complexes"; and introduction of the journal.

Exhibit 23: Title page of in press article in Current Opinion in Genetics and Development, "ATP-dependent chromatin remodeling complexes and DNA double-strand break repair"; and introduction of the journal.

Exhibit 24: Letter of recommendation from an independent expert, Prof. Joern Wettern, Chairman of Department of Carcinogenesis, Cornell University, School of Medicine.

Exhibit 25: Dr. Ravi Shetty's membership certificate for Sigma Xi, the scientific research society, and an introduction of the society and membership.

Exhibit 26: Dr. Ravi Shetty's membership certificate for the American Association for Cancer Research (AACR), and an introduction of the society and membership.

Exhibit 27: Dr. Ravi Shetty's membership certificate for the American Society for Biochemistry and Molecular Biology (ASBMB), and an introduction of the society and membership.

Chapter Seven

Petition Checklist, Petition Submission, Status Checking, How to Inquiry NCSC and USCIS for Issues

1. A Complete Petition Checklist for Form I-140 Petition of NIW

The EB2 National Interest Waiver petition is made on USCIS Form I-140. The information and documentation needed for the processing of Form I-140 immigration application include the following:

A Form I-140 petition cover letter to USCIS, with petitioner's signature;

Filled Form I-140 with petitioner's signature;

Form ETA-750 Part B, two copies;

Application Fee, a check or money order for Form I-140 application fee payable to U.S. Department of Homeland Security;

More than 3 reference letters from experts in your field;

Copies of awards and honors;

Copies of every article that you have published, and copies of abstracts from academic conferences;

Any requests for reprint of your scholarly articles;

Copy of prior nonimmigrant visa approval notice (H, F, L, J, O);

Current CV/Resume, including your employment history for the past six years (names, addresses, and exact dates of employment);

Copies of documentation indicating membership or affiliation to any professional organizations;

Copies of citations of your works found in other people's articles or in citation index;

Any invitations for you to give lectures to become a reviewer of other's work;

Proof of any U.S. government funding and private funding;

Any articles describing your project or research in newspaper, academic journals, or website;

Copies of any patent certificates received and patent applications/pending;

Your current employer's media kit or background information;

Copies of college degree diplomas or certificates;

Most recent W-2's;

Employment offer letter signed by Human Resource manager or designated hiring authority (if applicable);

Most recent pay stub with your employer;

Copy of your passport;

Copy of most recent I-94 Admission/Departure Record, front and back;

Copies of all Forms I-20 or SEVIS DS-2019, front and back (applicable if alien is currently in F-1/J-1 status);

Copy of Practical Training document (if any);

Copy of authorized employment card (if applicable);
Copy of foreign credential evaluation (if applicable);
Immigration information concerning your spouse and/or children.

2. How and where Should You File the I-140 Petition?

Mail to an Appropriate USCIS Address

On its website, USCIS provides the exact addresses where petitioners should mail I-140 petitions. The correct address depends on the circumstances of the petition, such as whether the petitioner is mailing the petition via courier service (such as UPS or FedEx) or U.S. Postal Service, whether the I-140 is being concurrently filed with the I-485 application for adjustment of status, and other factors. It is very important to file the petition to the right address; failure to do so can result in USCIS returning the petition to its sender.

For example, let's say a petitioner is filing a standalone I-140 petition (without any other accompanying petitions) and using FedEx to mail it. The correct address for these circumstances is:

USCIS

Attn: I-140

2501 S. State Highway

121 Business, Suite 400

Lewisville, TX 75067

Now let's say the same petitioner decides to file the petition using the U.S. Postal Service instead. In that case, the petitioner should mail the petition to this address:

USCIS

Attn: I-140

P.O. Box 660128

Dallas, TX 75266

These addresses are subject to change; check the USCIS website to ensure the address is correct before filing. Please see the Form I-140 instruction at <http://www.uscis.gov/forms>

E-Filing Form I-140

Certain Form I-140 filings may be electronically filed (e-filed) with USCIS. If you are e-filing Form I-140, it will automatically be routed to the appropriate Service Center, and you will receive a receipt indicating the location to which it was routed. For e-filed petitions, it is very important to review your filing receipt and receipt number, and make specific note of the receiving location.

All further communication, including submission of supporting documents, must be directed to the receiving location indicated on your e-filing receipt.

Premium Processing

If you are requesting Premium Processing Services for Form I-140, you must also file Form I-907, Request for Premium Processing Service.

You should send Form I-140 and I-907 to the address listed in the Form I-907 filing instructions. Do NOT send requests for Premium Processing to a Lockbox facility.

Before you file Forms I-907 and I-140 together, you MUST first determine whether you can request Premium Processing for the requested classification. To determine if the classification for which you are filing is eligible for Premium Processing:

please check the form instruction at <http://www.uscis.gov/forms>

see our web page: USCIS Started Accepting I-907 Premium Processing Service

The Petition Fee of Form I-140

A fee is required by USCIS to submit the Form I-140 petition. For the current fee of Form I-140 (and Form I-485), please check the form instruction at <http://www.uscis.gov/forms>

Use the following guidelines when you prepare your check or money order for the Form I-140 fee:

- (1) The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
- (2) Make the check or money order payable to U.S. Department of Homeland Security.

3. How to Check the I-140 Petition Processing Time and Your Case Status

1) Four Usual Sources of Processing Time

Once the Form I-140 has been filed, it will take time for USCIS to process the petition. The I-140 petition tends to be slow due to its complicated requirements of adjudication. In addition, the processing time of I-140 varies significantly among the USCIS Service Centers and even more significantly at different times.

To keep in mind, the I-140 processing times change constantly, and you should never make firm plans around any estimates of processing times. Also, USCIS usually issues the most optimistic dates available.

There are four usual sources of processing time information:

- (i) USCIS receipt notices: When a case is filed, the USCIS will send out a receipt notice (Form I-797) which has a range of processing times. You should be aware that these processing times are rarely updated, so they should not be trusted.
- (ii) USCIS automated computer system - USCIS Case Status Online Service: If you have a tracking number, you can check the automated system and get an update on the processing times. These are usually closer than the times on the I-140 receipt notice.
- (iii) Internet processing times lists: These are typically derived from USCIS statements. In some categories, they are accurate, but it is not always true for I-140 petitions.
- (iv) USCIS Information Officers: If you call the USCIS' National Customer Service Center (NCSC), you can ask the information officer for an update on processing times. These people also do not have complete information, but you can ask for the priority date of cases being processed at that time. About every two weeks, the USCIS information officers get an update of these dates, so you may get a good idea of processing times.

2) Call NCSC to Know Your Petition Status

Through the U.S. Citizenship and Immigration Services' National Customer Service Center (NCSC), you can call NCSC to know your petition status.

The NCSC gives customers throughout U.S. information on immigration services. You can call NCSC toll-free number for automated information and live assistance concerning

immigration services and benefits within the U.S.

NCSC phone number: 1 (800) 375-5283

Also, if you have a pending petition at a USCIS Service Center, you can call the NCSC toll-free number at 1-800-375-5283 when you need to report your address change.

3) USCIS Case Status Online Service

If you have a petition receipt number, you can also check the status of your case online:

(i) The USCIS Case Status Online Website: <https://egov.uscis.gov/cris/jsps/index.jsp>

(ii) The USCIS Process Times Website: <https://egov.uscis.gov/cris/processTimesDisplay.do>

4. Step-By-Step Instructions of How to Inquiry NCSC and USCIS Service Centers for Your Pending Case Related Issues

1) The Case Status Inquiries with NCSC and USCIS Service Centers

U. S. Citizenship and Immigration Services (USCIS) has issued instructions on making inquiries with the agency's four Service Centers. The petitioners and alien applicants should follow this guidance when inquiring about case related issues. This process standardizes customer service and streamlines processing of customer inquiries at USCIS Service Centers. The step-by-step instructions are as follows:

Step 1: Contact the National Customer Service Center (NCSC) at 1-800-375-5283. The NCSC can assist petitioners and alien applicants with case related inquiries. Before calling the NCSC, please have available your receipt number, alien registration number, type of application filed and date filed.

During your call, it is recommended that you take note of the following information:

The name and/or ID number of the NCSC representative;

The date and time of the call;

Any service request referral number, if a service referral on a pending case is taken.

Step 2: If more than 30 days have passed since you contacted the NCSC and the issue has not been resolved or explained, you can email the proper USCIS Service Center to check the status of your case.

California Service Center: csc-ncsc-followup@dhs.gov

Vermont Service Center : vsc.ncscfollowup@dhs.gov

Nebraska Service Center: ncscfollowup.nsc@dhs.gov

Texas Service Center: tsc.ncscfollowup@dhs.gov

Please note that the emails should be sent to the Service Center that has jurisdiction over your case. The receipt notice will indicate:

EAC for the Vermont Service Center;

SRC for the Texas Service Center;

LIN for the Nebraska Service Center; and

WAC for the California Service Center.

When contacting the Service Centers by email, you will need to provide the

information outlined in Step 1. If the NCSC did not issue a service request after your call, please indicate the reason the NCSC representative did not issue the request.

Step 3: In the event you do not receive a response within 21 days of contacting the appropriate Service Center, you may email the USCIS Headquarters Office of Service Center Operations by email at: SCOPSSCATA@dhs.gov. You will receive a response from this email address within ten days.

5. Understand the NCSC's General Immigration Information

The USCIS issued this instructions on how to follow up on cases pending at the USCIS Service Centers. These instructions should be followed by petitioners and alien applicants inquiring about timelines and generic information. One should not rely on general information from the government for legal options, analysis of a particular situation, or advice on how to proceed in a particular immigration case.

Potentially, the case follow-up procedures can be helpful for many situations. However, each step requires a waiting time. In some situations, such as case denials with time-sensitive deadlines, it is not advisable to wait for NCSC action. There are deadlines, often about 30 days, for challenging certain USCIS decisions.

It should be noted that calls to the NCSC are answered by individuals who provide general immigration information based on scripts. Responses to one's inquiry should be considered only as a general guideline. NCSC does not evaluate whether one is legally eligible to file a case, whether it is the correct procedure for that individual or family, or if other considerations exist that may completely change the equation.

6. Sample of a Pending I-140 Application's Current Status from USCIS Case Status Online

The following is an example of a pending I-140 application's current status from USCIS Case Status Online Website

Receipt Number: SRC0981152028

Application Type: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

Current Status: Case received and pending.

We received this I-140 IMMIGRANT PETITION FOR ALIEN WORKER, and mailed you a notice describing how we will process your case. Please follow any instructions on this notice. We will notify you by mail when we make a decision or if we need something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when yours will be done. This case is at our TEXAS SERVICE CENTER location. You can also receive automatic e-mail updates as we process your case.

You can choose to receive automatic case status updates, which will be sent via email. You can create an account online. You can also see our current Processing Dates for Applications and Petitions online.

Note: Case Status is available for Applications and Petitions which were filed at USCIS Service Centers. If you filed at a USCIS Local Office, your case status may not be reviewable online.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 – 5283 or 1-800-767-1833 (TTY).

Chapter Eight

The Request For Evidence, and Appeal a Denied Case

1. Understand the Request For Evidence (RFE) to Increase Your Chance of a NIW Petition Approval

1) An Example of a Request For Evidence (RFE) from USCIS

Question: I am a research engineer and working at our company's R&D center. I have applied a National Interest Waiver I-140 Form petition about four months ago. But it looks like something did wrong by my employer hired lawyer, I got a REF letter from USCIS Service Center asking for more evidence as below:

The petition has been reviewed and has been found to be deficient. A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

An individual alien could not benefit the national interest by virtue of engaging in the field or seeking an as yet undiscovered solution to the problematic issue. The evidence presented does not establish that the beneficiary is a researcher who is recognized as outstanding in the academic field.

Please describe specifically all of this beneficiary's exact prior achievements and how these have influenced his field. Provide documentary evidence such as letters from experts attesting to the beneficiary's recognized work and the influence in his field.

In order to establish the beneficiary as researcher who is recognized as outstanding in the academic field, submit additional evidence relating to satisfy and how the beneficiary would qualify for the category specified. Please provide evidence of original contributions, publications and presentation of research work, so the alien's achievement is sufficient to meet the threshold of recognized excellence.

So what can I do now? and can I get a help from your service?

2) The Request For Evidence (RFE) and the Burden of Proving Your Eligibility

For National Interest Waiver Green Card application, the burden of proving eligibility for the benefit sought remains entirely on the petitioner, and the petitioner has to meet the burden. When your petition has been poorly documented, you may get a notice of the USCIS' unfavorable decision, a written statement of the reason for the negative outcome and an explanation of how to appeal.

As an alternative, USCIS may request for additional information or called Request For Evidence (RFE), by sending you a letter and a list of information and documents it needs to determine your eligibility. You must respond to such a request within the specified time period, or your petition will be decided on the basis of the already submitted documents.

When you file a NIW Green Card application, the USCIS examiners have three choices:

- i) approve the application, or
- ii) deny the application, or
- iii) request for additional evidence.

When a letter of Request For Evidence is sent out, the applicant has certain time to respond. Responses to an RFE usually rely on legal arguments to a great extent, in addition to new documentary evidence to satisfy the examiner's requests. Many approved NIW cases start with a RFE.

3) Understand the Request For Evidence to Increase Your Chance to Obtain a Green Card

There are a lot of complaints with reference to the significant USCIS delays in sending out Requests for Evidence. The USCIS presumes that it is in the U.S. national interest for most foreign nationals seeking Green Cards to undergo the Labor Certification. The Labor certification is a competitive recruitment process, where the U.S. employer demonstrates to the U.S. Department of Labor that the employer has not been able to find a qualified U.S. worker to perform the same job duties as the foreign national.

On the other hand, certain advanced degree professionals or those who are considered "exceptional" and who have demonstrated a significant impact on their selected field, may be eligible for the EB1 or National Interest Waiver (NIW) process.

From time to time, the immigration community observes that there is an increase in denials of EB1 or NIW cases. Typically, before the USCIS issues a denial in any type of case, it first sends a Request For Evidence. Receipt of an RFE enables the applicant the opportunity to present additional evidence, for a fair and accurate determination. This procedure is in keeping with the purpose of the EB1 or NIW to create an avenue to obtain permanent resident status for an applicant who demonstrates that her or his work will substantially benefit the U.S.

In the cases where RFEs are received, the specific requests for documentation have bordered on the bizarre. For example, there was an RFE that the applicant would have to prove that the applicant could not "eventually" train someone else to do their work. Yet we know that any worker, even an expert, can be replaced "eventually." In fact, every person in the world is ultimately and arguably replaceable, since one could argue that we do not need any more cutting edge research and we can all survive without any new research or development. Such requests have no connection with the intention of the law underlying EB1 or National Interest Waivers.

Another RFE for an NIW requests evidence that the applicant has obtained awards other than academic awards. That is indeed a strange request, because awards are not one of the mandatory criteria for the NIW category and may arguably be useful to show that a person is "extraordinary." In another case, a candidate's salary was deemed questionably low by the USCIS. But actually, a person's salary is not a criterion for NIW, but rather for the EB1-Extraordinary Ability process. In NIW cases, requests for evidence of high remuneration are inappropriate.

There are some cases that the USCIS has been issuing denials without RFEs. Especially frustrating was some petitions that were summarily denied after waiting for review by USCIS for delayed time period. In other cases, same USCIS Service Center denied the NIW case, but approved EB1-Extraordinary Ability petition for the same applicant. The denial of the NIW petition stated that the applicant failed to meet the "exceptional" standard. This appears to fly in the face of reason, when the USCIS admits that the person satisfied the higher standard of extraordinary ability for the EB1 petition, but could not satisfy the lower "exceptional" standard for the EB2 petition.

Therefore, if a candidate potentially qualifies for both NIW and EB1, it may be worthwhile considering to file in both categories, to increase the chance of success for getting the

Green Card.

4) The Tips for the Request For Evidence

The following are tips on I-140 RFEs issued by the USCIS:

- i) RFE Response Deadline: With rare exceptions, the USCIS normally allows more than 30 days from the date the RFE is issued for the petitioner to respond. More importantly, it does not permit any time extensions. A RFE due date is fixed, and there are no exceptions to this rule. If a petitioner fails to respond to a RFE in time, the USCIS will usually deny the petition as "abandoned."
- ii) Never Receive the RFE: Although it is standard practice for the USCIS to send an I-140 RFE to the petitioner, sometimes the petitioner never receives the RFE. The first indication of a problem then occurs when the petitioner receives a Denial Notice directly. In this case, the petitioner can request the USCIS to reopen the case because RFE was never received - documentary proof of non-receipt is not possible. The USCIS has reopened I-140 cases where the petitioner has, in a timely manner, reported the problem to USCIS.
- iii) Sign up with the USCIS Case Status Service: In order to avoid non-receipt of RFEs, the petitioner should sign up with the USCIS Case Status Service for email notification on petition status for the I-140 filed. When an RFE is issued, the online status message will be changed to reflect this event, and an email will automatically be sent to the petitioner.

2. How to Avoid the Request For Evidence (RFE) from USCIS for Your NIW Petition, and What You Should Do If You Receive It

1) How to Avoid the Dreaded Request for Evidence

To avoid the Request for Evidence, first and foremost, prepare your case carefully and discuss the standard with your employer, and if possible, with your supervisor or mentor, to evaluate whether the National Interest Waiver classification applies and whether the necessary evidence can be gathered.

You should tailor your petition to the correct audience. Not all USCIS examiners are college educated, and none are likely to be experts in your specialized field. Additionally, USCIS examiners have a very limited amount of time to read all the materials in each petition - less than 30 minutes in most cases. Therefore, you need to present your accomplishments and qualifications in plain English terms. This is especially important in the peer recommendation letters and in the cover letter.

We have been told that USCIS examiners are not impressed by the volume of material submitted; in fact, the examiner might be more likely to set aside a particularly large submission in favor of a shorter one. Be selective and include only the strongest evidence.

The key point to remember in crafting a NIW petition is to establish your current work is in U.S. national interest. Each piece of evidence should speak to that standard.

2) USCIS Will not Approve a NIW Petition Simply Because the Alien Meets Basic Requirements

Strange as it seems, some people who qualify for EB1-Extraordinary Ability do not automatically qualify for the National Interest Waiver category, even though the standards for NIW are basically lower than that for EB1-Extraordinary Ability. It is therefore important to

prepare a Form I-140 petition for a person to file NIW petition, according to the statutory and regulatory guidelines in order to avoid a Request for Evidence:

- i) Ensure that all forms are completely filled out.
- ii) Clearly document in the petition cover letter about how the individual is qualified for this eminent category.
- iii) Ensure that the alien meets the NIW requirements. Although meeting the NIW requirements would not guarantee an approval, but if an alien can not satisfy the basic NIW requirements, it may be wise to consider other category.
- iv) Clearly document through evidence that the alien qualifies for each category. Some examples of this are:
 - (a) If the alien's articles are internationally published, provide copies of the published papers and circulation information proving that the journal is internationally published;
 - (b) If the alien has received an award, show proof of the receipt of the award and then show the criteria for the award and why it is so important in that person's field;
 - (c) If the alien is highly paid, show that he is paid more than the weighted average, by showing copies of salary surveys for that particular position.
- v) If this is an employer sponsored petition, document the employer's ability to pay through:
 - (a) Copies of Signed Corporate Federal Tax Returns;
 - (b) Copies of Audited Financial Statements; or
 - (c) If the company has over 100 employees, provide a signed statement from the Chief Financial Officer (not the Human Resources Department) documenting the petitioner's ability to pay.
- vi) If this is a self-petition and without a job currently, document the following to demonstrate how the alien intends to support himself/herself through:
 - a) Offer of Employment or Contract;
 - b) Proof of Current Assets.
- vii) Remember that the USCIS will not approve a NIW petition simply because the alien meets the basic requirements. An alien applicant must show that:
 - a) the alien seeks employment in an area of substantial intrinsic merit;
 - b) the benefits of the alien's proposed employment must be national in scope;
 - c) it would be contrary to the national interest to potentially deprive the prospective employer of the alien's service by making available to U.S. workers the position the alien seeks.

3) What You Should Do After Receiving the RFE

When your NIW petition can not be immediately adjudicated, a request for additional evidence will be sent to you. During the response time period, you may:

- 1) submit all of the requested evidence,

- 2) submit some or none of the requested evidence and ask for a decision based upon the record, or
- 3) withdraw the petition.

If a correction is needed to the petition, a photocopy of the form will be included with the Request for Evidence. The correction can be made on the photocopy and then will be included in the formal USCIS file of your case.

No extension of the RFE response time is possible. Please also note that no interim benefits will be granted during the time waiting for additional evidence to be submitted. If a response is not received within the time limit, the case will be considered abandoned and denied; the denial may not be appealed.

- 1) It is extremely important that the letter requesting evidence be returned with the evidence and that the special mailing envelope provided be used. Failure to do so will delay processing of the case and may result in a denial due to abandonment.
 - 2) Evidence submitted without the letter and/or proper return mailing envelope will be difficult to match up with the pending case and may be treated as general correspondence.
- 4) Get Help from Our "Complete Do-It-Yourself Package for RFE of National Interest Waiver Petition"

It is critical to appropriately and proficiently reply the USCIS issued Request For Evidence, incorrect response of the RFE will directly result in your NIW petition rejection.

3. Example of a Denied NIW Case, and How to Appeal a Denied National Interest Waiver Petition

1) Example of a Denied Case

Question: My I-140 NIW petition was denied recently. The USCIS officer did not agree that the national interest would be adversely affected if a Labor Certification were required. The reasons were described in detail as below:

- a) "An overall view of the record suggests that the beneficiary has played an important role in the activities. However, the evidence presented does not establish that the petitioner is the primary motivator behind projects."
- b) "A petitioner seeking the waiver must persuasively demonstrate that he will serve the national interest to a substantially greater degree than an available U.S. worker having the same qualifications."
- c) "However, original contributions, publications and presentation of research work are inherent to the position of a researcher. The fact that the alien was successful in his endeavors is not necessarily sufficient to meet the national interest threshold."

Do you think I should appeal the denial or re-file a new NIW I-140? I have no idea about how to write a letter to argue with the above points, and the timing frame for appeal is also very short.

2) Appeal a Denied National Interest Waiver Petition

The USCIS presumes that it is in the U.S. national interest for most foreign nationals seeking Green Cards to undergo Labor Certification. The Labor certification is a competitive recruitment process, where the U.S. employer demonstrates to the U.S. Department of Labor that the employer has not been able to find a qualified U.S. worker to perform the same job duties as the foreign national.

Typically, before the USCIS issues a denial in a NIW case, it first sends a Request for Evidence (RFE). Receipt of an RFE enables the candidate the opportunity to present additional evidence, for a fair and accurate determination. This procedure is in keeping with the purpose of the NIW - to create an avenue to obtain permanent resident status for a candidate who demonstrates that her or his work will substantially benefit the U.S.

When your NIW petition is denied by the USCIS, that decision can be appealed to a higher authority for review. In immigration proceedings, the appeal review authority is divided between two separate government agencies:

- i) the Administrative Appeals Office (AAO) within the USCIS; and
- ii) the Board of Immigration Appeals (BIA), under the jurisdiction of the Executive Office of Immigration Review, United States Department of Justice.

Only the person who submitted the original petition may file the appeal. The petitioner alone has standing to appeal the denial of the immigration application. If an appeal is filed with AAO, that appeal will be reviewed by AAO to see if the grounds of denial have been overcome. If so, the appeal should be treated as a motion and the case will be approved.

The person appealing the decision may also be represented by an attorney or representative. If the petitioner is represented, the appeal must be accompanied by a properly executed USCIS Form G-28 (Notice of Entry or Appearance as Attorney or Representative). The Form G-28 must be signed by both the attorney or representative and the person who filed the original application.

3) How to Appeal the Denial

If your petition was denied by USCIS and you believe that your NIW case is strong, you can choose to appeal. The USCIS Administrative Appeals Office will evaluate your appeal carefully, and then make the final decision.

If you think your NIW case is strong enough, you can file an appeal. Otherwise, you can re-file NIW and/or try other immigration categories such as EB1-EA (Extraordinary Ability), EB1-OR (Outstanding Researcher or Professor), or even Labor Certification.

The time frame for an appeal is short. There are strict deadlines that must be met to properly file an appeal. The appeal must be filed with the correct fee at the USCIS Service Center that made the original decision. You may file an explanation in support of the appeal. After review, the appeal authority may

- i) agree with you and change the original decision;
- ii) disagree with you and affirm the original decision; or
- iii) send the case back to the original office for further action.

If your Form I-140 immigration petition is denied, you should carefully review the written decision that is issued by the USCIS to determine whether you may appeal the denial of your application. The USCIS' decision notice will inform you of the reasons for the decision, notify you of the proper appellate jurisdiction (such as AAO), and the applicable deadlines, and provide you with the correct USCIS form information to file an appeal.

If you desire to appeal the denial of an application, the notice of appeal must be filed within 30 days of the date of the decision. If you receive the decision by mail, you must file the appeal within 33 days of the date of the decision.

If the Administrative Appeals Office has jurisdiction over the decision, the notice of

appeal must be filed on Form I-290B - Notice of Appeal or Motion. You file this form to notify USCIS that you are appealing an adverse decision regarding your case. The appeal must be filed with the USCIS Service Center that made the original decision. An explanation may be filed in support of your appeal. The fee must be included, and the successful appeal rate is small.

4. Significant Guidance to Reopen or Reconsider a Denied Case, or Re-filing in the Same Category

1) A Motion to Reopen or a Motion to Reconsider

In addition to the right to appeal in which you ask a higher authority to review a denial, you may file a "Motion to Reopen" or a "Motion to Reconsider" with the USCIS Service Center that made the unfavorable decision. By filing these motions, you ask the USCIS Service Center to reexamine or reconsider its decision.

i) A Motion to Reopen: A motion to reopen must state the new facts that are to be provided in the reopened proceeding, and must be accompanied by affidavits or other documentary evidence. If the petition was denied because you left out necessary documents that have since been located, the new documents should be sent, together with a written request that the case be reopened to the same USCIS Service Center that issued the denial. This is called "Motion to Reopen". There is a fee to file this motion. Appeals often take a long time. A Motion to Reopen can be concluded faster than an appeal.

ii) A Motion to Reconsider: A motion to reconsider must establish that the decision was based on an incorrect application of law or USCIS policy, and further establish that the decision was incorrect based on the evidence in the file at the time the decision was made.

Any motion to reopen or reconsider must be filed with the correct fee within 30 days of the decision. A motion to reopen or reconsider a USCIS decision must be filed on Form I-290B - Notice of Appeal or Motion. You file this form to notify USCIS that you are filing a motion to reopen or reconsider a USCIS decision regarding your case. The motion must be filed with the USCIS Service Center that made the original decision. An explanation and evidence may be filed in support of your motion, and a fee must be included.

2) Re-filing in the Same Category and the Suggested Alternatives

For the appeal, the best way to handle an appeal is to try to avoid it. Filing an appeal means making an argument to the USCIS that its reasoning or facts were wrong. This is difficult to do successfully. If you think you can eliminate the reason why the petition failed by improving the paperwork, it makes sense to disregard the appeal process and simply file a new petition, better prepared than the first one.

If your National Interest Waiver petition fails, it is recommended to NOT file an appeal if you do not have strong evidence. An appeal to the AAO takes a year or longer to be decided, and it is unlikely in most cases to lead to a reversal. If you think your case is strong enough, you can file an appeal. Otherwise, you can re-file a NIW petition, or try other immigration categories such as EB1-Extraordinary Ability, EB1-Outstanding Researcher or Professor, or even Labor Certification.

Basically, you can re-file the same category after its denial. The only requirement is that you should disclose the information about your previous denied I-140 case in your new I-140 petition. The Form I-140 requests the information of previous filing.

To overcome the previous denial, you should add new evidence to the new petition. If you work as a researcher or an engineer, most likely you have more patents, academic papers, journal articles, and more citations. These are the information that the regulations requests for EB1-EA, EB1-OR, and NIW petitions. Your recent NIW denial will not affect the following new filings.

Therefore, the suggested alternatives include:

- i) File the Form I-140 petition again, with whatever additional publications or other materials available, and addressing the reasons for the initial denial.
- ii) Consider filing an EB1-Extraordinary Ability, or EB1-Outstanding Researcher or Professor petition, if you are one of the top few in a field, or if you have made a significant accomplishment in a field.
- iii) Consider traditional Labor Certification, which allows restrictive requirements based on business necessity, and can help focus on the beneficiary's particular skills required by the petitioner.
- iv) Finally, do not forget to think about other paths to U.S. Permanent Residence, including family-based sponsorship, spouse's employment-based options, the diversity visa lottery program, or even asylum.

Chapter Nine

The e-Filing of Form I-140, and the Form I-485 Application

1. Complete Instructions for Filing Form I-140 National Interest Waiver Petition Electronically (e-Filing)

1) The Electronically Filing of Form I-140 NIW Petition

The Form I-140 NIW petition, Immigrant Petition for Alien Worker, can be e-filed. The e-Filing is optional, and if the e-Filing is not the best option for you, you can file the paper-based Form I-140 petition as we described previously.

The E-filing is a USCIS procedure through which applicants can file their cases online. On the e-filing system, an applicant can fill out an application (i.e., Form I-140) and submit it to USCIS electronically. USCIS will issue an e-notice immediately after it receives the e-filed application.

An I-140 NIW application can be e-filed. By e-filing, your case's priority date is the date when the I-140 application is e-filed. The supporting documentation must be submitted to the USCIS Service Center that has jurisdiction over your case. The required initial evidence must be received by the Service Center within seven business days of e-Filing the form. If you do not submit the required initial evidence in the requisite time period, you will not establish a basis for eligibility, and USCIS may deny your petition. You cannot concurrently file a paper-based Form I-140 application and e-Filing a Form I-140 application.

To use the e-Filing, you should use the USCIS web site at:

<https://efiling.uscis.dhs.gov/efile>

The Acrobat Reader software is needed in your computer for e-filing. If you are a first time user, you should register for your e-Filing user account. You can create a login account first by selecting the link "I am a new user" to create an account, and you should enter the required information and select Submit to create an e-Filing account. You will receive a confirmation e-mail regarding your e-Filing system account registration at the e-mail address you provided.

After creating your account, you can enter your User ID and Password, and select Log in to begin using the e-Filing system. You should make sure you have all required information at hand before beginning your session, and you can print your application and Confirmation Receipt notice or save it to the A: drive, or hard drive, of your computer. You also should have your credit card, debit card, or bank account and routing number available to pay the filing fee.

2) Filling Out Your Petition

- i) Follow the instructions provided through your e-Filing session to complete your application.
- ii) Determine if your application has been successfully submitted to the USCIS: Your application has been successfully filed and received by the USCIS if:
 - a. You received a Receipt Number on the web Confirmation Receipt Page AND your application no longer appears in your list of saved applications on the My Forms screen; or

- b. You received a Form I-797, Notice of Action, through the mail within 10 days of e-Filing your application. Form I-797 will have your Confirmation Receipt Number printed on it.
- iii) Your application may not have been successfully filed and submitted if:
 - (a) "Pending" appears under "Status" on the My Forms screen, or
 - (b) "Action Needed" appears under "Status" on the My Forms screen.

Here, "Pending" means the application has not yet been completed and filed. "Action Needed" means that there may have been a problem with your transaction.

3) After e-Filing Out Your Petition

- i) Write down the Receipt Number provided on the web Confirmation Page before clicking the "FINISH" button to generate a PDF copy of your submitted application.
- ii) Save your completed application and Confirmation Receipt notice on a floppy disk or on your computer's hard drive as a PDF file. To do this, click on File and then Save As... on the toolbar at the top of your Acrobat Reader. Select "Portable Document Format (*.pdf)" from the "Save as type" drop-down box. If you did not write down or print your receipt number, just wait approximately 10 days for the arrival of your Form I-797, Notice of Action, in the mail. Form I-797 will have your Confirmation Receipt Number printed on it.
- iii) Print your completed application and Confirmation Receipt by clicking on File and then Print on the toolbar at the top of your Acrobat Reader, or by using the printer icon at the top left of the toolbar.
- iv) Review the Form Specific e-Filing Instructions for the application you wish to file to determine which documents you may need to provide to support your application.
- v) Check the status of your application online at the USCIS homepage where you may "Check Case Status." Information should be available 48 - 72 business hours after you e-File.

4) Paying Fees for e-Filed Petitions

USCIS accepts credit card, debit card, or electronic transfer of funds from a checking or savings account from a U.S. bank, for payment of fees associated with e-Filed applications.

- i) **By Credit/Debit Card:** You may pay the fees associated with your e-Filed applications using a credit or debit card with logos from the issuing credit card merchants: American Express, Discover, MasterCard, or Visa.

If you use an American Express credit card, you will be asked for the card's security indicator. The security indicator on an American Express credit card is the three or four digit number on the front or back of your credit card that is used to

verify that you have possession of the card. You are not required to enter a security indicator for the other credit cards.

- ii) By Electronic Transfer of Funds from a Checking or Savings Account: You will need to know your bank account and bank routing number. Your bank's 9-digit routing number appears on the bottom left corner of your check and is set off by colons (Example ::123456789). A few banks and credit unions may not allow electronic payments directly from your account. Please be sure to contact your financial institution if you have questions.

Every time you successfully submit an e-Filing application, your Credit Card or bank account is charged for that application's filing fee. USCIS will not refund payment caused by customer error.

2. How to Submit NIW Supporting Documentation for Your e-Filing Case and Avoid Common Mistakes

1) Submitting NIW Supporting Documentation

For Form I-140 NIW applications, you should remember to make sure that USCIS needs to receive supporting documents within 7 business days from the date of your e-filing. For example, if you e-file your I-140 on July 31, your supporting documents should be received by USCIS by August 9.

Supporting documentation is the initial evidence that is required as proof of identification and as justification of eligibility for a benefit. These documents are required for USCIS to make a decision on your application. Examples of supporting documentation for NIW application may include reference letters, cover letter, published articles, copies of current visa, birth certificates, marriage licenses.

You need to review the instructions for your e-Filed form to determine what supporting documentation is required, and gather your supporting documentation for your e-Filed application:

- i) Originals and Copies: In almost all cases, submit a photocopy of your supporting document to the USCIS.
- ii) Translations: Any foreign language document must be accompanied by a full English translation that the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate the foreign language into English.

You need to print a copy of your Confirmation Receipt notice and attach it as a cover page (or first page) to your supporting documentation package, and you should not include a copy of your e-Filed application with your supporting documentation. If you e-Filed several applications concurrently, you will have a Confirmation Receipt notice for each application submitted. Then you should include the Confirmation Receipt notice as the first page of the supporting documentation for each application.

The guidelines for submitting supporting documentation also include:

- a) If you choose to use e-filing, you should not include any paper-based applications or fees with your supporting documentation for the e-Filed application.
- b) You should keep a copy of your Confirmation Receipt notice and

application for your records, and you should also keep a copy of your supporting documentation you mailed and the date you mailed it.

- c) You may wish to make a copy of the entire package before mailing it.
- d) You should place all supporting documentation into one package and mail it to the address provided on the Confirmation Receipt notice.

Failure to follow these guidelines may result in processing delays or even denial of your application.

2) How to Avoid Common e-Filing Mistakes

i) **Do not Submitting Your Application More Than Once:** Every time you successfully submit an e-Filing application, your Credit Card or bank account is charged for an application fee. USCIS will not refund payment caused by customer's error.

ii) **Do Not Resubmit Your e-Filing Application:** Do not resubmit your e-Filing application if:

- (a) You received a Confirmation Receipt Number, or
- (b) You have already submitted your payment information

If you are not sure whether you have submitted the payment information successfully, just wait 2 business days and check with your Credit Card merchant or banking institution to confirm if payment has been taken from your account. If payment has been taken, you should receive a Form I-797, Notice of Action, by mail from USCIS within 10 days, which indicates your application was successfully submitted – **DO NOT Re-File Your Application.**

It may take 48 business hours for your Credit Card or bank account to be debited, and 72 hours before you can track your application through Case Status Service Online.

iii) **Call the National Customer Service Center for Help:** Call the National Customer Service Center (NCSC) at 1-800-375-5283, if you believe you have submitted your application but:

- (a) You did not receive a Confirmation Receipt Number;
- (b) Your case remains in the “Action Needed Status” on the My Forms screen; or
- (c) You were charged for the fee (and have checked with your Credit Card merchant or banking institution to confirm) but have not received your Form I-797, Notice of Action, by mail within 10 days of filing your application.

Be prepared to provide the following information when calling NCSC:

- (a) e-Filed Receipt Number (if available);
- (b) Payer's Full Name;
- (c) Payment Type (bank account or Credit Card). (Do Not Provide Your Credit Card/Bank Account Number);
- (d) Applicant's Full Name;

- (e) Form Type;
- (f) Date and time of e-Filing submission

Please ask to have a member of the e-Filing Program Management Team review your information and contact you about your case.

iv) Saving a Copy of Your Application/Confirmation Receipt Notice: Here is how to create the Application and Receipt Notice Files:

- (a) Once your application fee payment has been successfully processed, the e-Filing system will display your Confirmation Receipt Number on the screen. Please write down the Confirmation Receipt Number prior to clicking the "FINISH" button to generate a PDF file.
- (b) Click on the "FINISH" button located on the Confirmation Receipt notice screen. The e-Filing system automatically creates an electronic PDF copy of your application and Confirmation Receipt notice.
- (c) It is recommend that you print copies of these documents and/or save them to a floppy disk or to your computer's hard drive for future reference.

v) Keep Proof of Filing: You will need a copy (electronic or paper copy) of your application and Confirmation Receipt notice for your records. You will also need to provide a copy of the Confirmation Receipt notice when:

- (a) Submitting supporting documents, or
- (b) Having your biometric information captured.

If you did not write down or print your Receipt Number from the Confirmation Receipt notice screen, please wait approximately 10 days for the arrival of your Form I-797, Notice of Action, in the mail. Form I-797 will have your Receipt Number printed on it. If you do not receive your Form I-797, Notice of Action, in the mail within 10 days, call the National Customer Service Center for assistance at 1-800-375-5283.

vi) Do Not Delay Mailing the Supporting Documentation: USCIS cannot process your case without its supporting documentation, if such documentation is required. Please send in your documents soon after you have e-Filed your application.

3. Form I-485 Application for Adjustment of Status - the Next Step to Obtain Your Green Card

1) Filing Form I-485 Application for Adjustment of Status

If you have obtained Form I-140 approval and an immigrant visa number is immediately available, you can file Form I-485 application for adjustment of status from a non-immigrant to an immigrant, and get your Green Card. When there is a waiting time for immigrant visa numbers, the EB2 NIW petitions normally have much shorter waiting time than EB3.

With the USCIS regulations that permit concurrent filing of I-140 and I-485, you may prefer to file I-140 and I-485 concurrently at the same time, If an visa number is

immediately available.

The Form I-485 application is a tedious process, and many forms and documents are required. It is necessary to have most of the documents ready ahead of time if possible. The required documents include:

- i) several USCIS forms;
- ii) immigration photos;
- iii) personal documents like birth certificates, marriage certificates;
- iv) complicated medical examination;
- v) financial supporting documents;
- vi) many other legal status and immigration documents in U.S.

To help your Form I-485 application, we provide a "Complete Do-It-Yourself Package for Form I-485 Application." As our existing customer, you will get \$20 discount for ordering this package.

2) Special Considerations for Form I-485 Application

The processing time for Form I-485 has been consistent in the past, but varies among the USCIS Service Centers. It will take about 10 to 18 months for Form I-485 processing, and there is no sign of relief in time, due to an increased number of applicants.

Two special considerations for Form I-485 application:

- i) Before the approval of Form I-485, one advantage of I-485 application is that the applicant and its dependants are allowed to apply for Employment Authorization Document (EAD) together with the filing of I-485. Unlike I-485 itself, EAD application takes 3 to 5 months to approve, and in case it takes longer than three months, one may obtain a temporary work permit from a local USCIS office. This is particularly helpful for applicant's spouse.
- ii) If the primary applicant is in H-1B status, it is advised to maintain the H-1B status instead of using EAD. Because H-1B is a legal status which does not depend on your I-485 processing. If your I-485 application fails, you still have H-1B legal status in U.S. While EAD depends on the underlying Form I-485 immigration process, and it may become invalid if the underlying I-485 immigration process fails for any reason.

Once your I-485 is approved, you are legally a U.S. permanent resident already. It may take some time to get the actual Green Card, for USCIS to issue the Green Card to you.

4. Advantages of Filing an Form I-485 Application Early, and What Happens If the Priority Dates Retrogress

1) The Priority Date and the Advantage of Filing the I-485 at the Earliest Opportunity

Understandably, many people confuse the concept of Priority Dates. The Priority Dates determine when an alien applicant will have the ability to file the final stage of the application for a Green Card, known as the Adjustment of Status or Form I-485 application.

The advantage of filing the Form I-485 at the earliest opportunity is that it allows the alien applicant and any immediate family members the following opportunities:

- i) file for the EAD or the Employment Authorization Document - permission to work without having to maintain a temporary worker status such as H1B, and
- ii) file Advance Parole - permission to reenter the U.S. after travel abroad while the I-485 is pending.

In employment-based immigration requiring Labor Certification, a priority date is the officially acknowledged date that the case was filed at the U.S. Department of Labor. If the employment-based case was filed in a category that does not require Labor Certification, such as EB1 and EB2 NIW, then the priority date assigned by the USCIS is the date that the Form I-140 is received by an USCIS Service Center.

A person determines when he or she will be able to file for the Form I-485 by checking the dates each month on the Visa Bulletin Chart. Every month, the U.S. Department of State publishes the Visa Bulletin which is posted at U.S. Department of State's website. The Visa Dates indicate whether the dates are current or whether there is a backlog in order to file for the Adjustment of Status or Form I-485. The priority date must also be considered for consular processing (CP) filings.

2) Understand the Visa Bulletin and the Immigrant Visa Quota

By law, there is a quota or limit to the number of people who can receive a Green Card in a given year. This quota is based both on the employment-based category (EB1, EB2, or EB3, etc.) and on "per country" limits, meaning that every country, no matter how large or how small, is given the same maximum percentage allocation of the worldwide quota. Countries like China and India with large populations are then subject to longer waiting times than a person born in a neighboring country like Pakistan or Nepal.

The number of spaces, sometimes referred to as "visa numbers", for a particular country, that are available at any given time, will depend on various factors, for example, how many immigrant visas have been approved at consulates abroad, how many I-485 applications have been approved for persons from that country in the U.S. during the prior month, etc. Such factors determine the movement of priority dates and, in turn, will affect the number of I-485 applications that can be filed during the following month after the priority dates are released.

If the Visa Bulletin chart states "C" for a given category and country, that indicates that the numbers are current in the specific employment-based category, whether EB1, EB2, or EB3, and that there is no waiting period for filing the I-485 application. If the numbers are backlogged as indicated on the Visa Bulletin, there will be a date mentioned, sometimes called a "cut-off date". If the Priority Date is before the date indicated, then an alien applicant is eligible to file the I-485 application for adjustment of status during the particular month when the dates are current.

It is important to note the month for which the Visa Bulletin chart is issued. The Visa Bulletin is released about 2 weeks in advance. For example, if the Priority Date is not current for April of this year, but when the May dates are issued in mid-April the chart shows that the date will be current for May of this year, then an alien applicant will be able to file the I-485 during the month of May. If the I-485 application reaches the USCIS early, say on April 30, when the dates only become current in May, the case will either be rejected by the Service

Center's mailroom, or if it is processed, the I-485 may be denied one or two years later – merely for filing a day too early!

3) What Happens If a Priority Date Will Retrogress?

A often asked question is what happens that the Priority Date will retrogress for my application? If a person has already filed the I-485 application when the priority dates were current, but then the Visa Bulletin date retrogresses to a date before the priority date, the foreign national would still accrue the benefit of being able to remain in the U.S. with renewable EAD and permission to travel, even after completing the six years on H1B status in the U.S. However, the Form I-485 application could not be approved until the date becomes "current" again.

When the immigration visa number is unavailable for an alien, either because of the total unavailability of the visa numbers for everyone in certain category, or when the visa number is generally available because of the cutoff date and one's priority date is far from the cutoff date, there are two consequences taking place depending on at what stage an alien is in for the Green Card process.

For those who have already submitted I-485 applications, it means that the USCIS will not be able to conclude his/her application during the period of visa unavailability, and the USCIS will just store the application and wait for the visa number availability for him or her, until it becomes available.

For those who are still at the stage of I-140 application or Labor Certification, it means that even if an alien employee can get the I-140 or Labor Certification approval, the alien will not be able to file an I-485 application during such period, and consequently no EAD or Advance Parole will be available as well.

Chapter Ten

Recent USCIS Developments on NIW

Due to many factors including the weakened job market and slow economy, USCIS has responded by tightening nearly all employment-based visa categories.

Filing a successful NIW application is more difficult nowadays.

However, new policies and regulations have added in the employment-based arena to help fuel the nation's economy and stimulate investment by making it easier for high-skill immigrants to start and grow companies and create jobs here in the United States since 2011.

It has clarified that immigrant entrepreneurs may obtain an employment-based second preference (EB-2) immigrant visa if they satisfy the existing requirements, and also may qualify for a National Interest Waiver under the EB-2 immigrant visa category if they can demonstrate that their business endeavors will be in the interest of the United States.

In summary, the USCIS shift not only leads to additional work that makes EB-2 NIW petitions more time consuming and nerve-racking for NIW applicants, but also leads to a greater number of denials. Knowledge is power. Read this educational EB-2 NIW handbook first, get prepared and build a strong case with your NIW application.

Chapter Eleven

Sample Petition Related Forms

Go to <http://www.uscis.gov> for updated I-140 and eta750b Forms. For the technical reasons, the filled sample I-140 and eta750b Forms are omitted in this digital version.