



U.S. Citizenship and Immigration Services

Immigrant Petition for Alien Worker
(Form I-140)

January 2016

Form I-140 Categories

- 1st Preference

- E11 – Alien with Extraordinary Ability
- E12 – Outstanding Professor and Researcher
- E13 – Multinational Manager and Executive

- 2nd Preference

- E21 – Member of the Professions holding an Advanced Degree or an Alien of Exceptional Ability (Not seeking a National Interest Waiver)
- NIW – 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.

- 3rd Preference

- E31 – Skilled Worker
- E32 – Professional
- EW3 – Other Worker



Requirements for 1st Preference

E11 – Alien of Extraordinary Ability (sciences, arts, education, business or athletics)

In general, the petition must be accompanied by evidence that:

1. The individual has sustained national or international acclaim;
2. The individual's achievements have been recognized in the field of expertise;
3. The individual is one of that small percentage who has risen to the very top of the field of endeavor;
4. The individual seeks to enter the United States to continue work in the area of extraordinary ability; and
5. The individual's entry into the United States will substantially benefit prospectively the United States.

An individual may self-petition for an E11.



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Requirements for 1st Preference

E12 – Outstanding Professor or Researcher

In general, the petition must be accompanied by evidence that:

1. The beneficiary is recognized internationally as outstanding in a specific academic area;
2. The beneficiary has at least 3 years of experience in teaching or research in the academic area; and
3. The beneficiary seeks to enter the United States for a
 - Tenured Position (or tenure track position) within a university or institution of higher education to teach in the academic area;
 - Comparable position with a university or institution of higher education to conduct research in the area; or
 - Comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.



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Requirements for 1st Preference

E13 – Multinational Executive or Manager

In general, the petition must be accompanied by evidence that:

In the 3 years preceding the time of the beneficiary's application for classification and admission into the United States:

- The beneficiary has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof, and
- The beneficiary seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.



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Requirements for 2nd Preference

E21 – Members of the Professions holding Advanced Degrees or Aliens of Exceptional Ability (not seeking a National Interest Waiver)

Advanced Degree:

In general, the petition must be accompanied by evidence that:

1. The job for which the beneficiary is being petitioned for requires at least an advanced degree or its equivalent;
2. The beneficiary actually possess the advanced degree or its equivalent; and
3. The Department of Labor (DOL) has certified there are not qualified U.S. workers who applied for the position.

Aliens of Exceptional Ability:

In general, the petition must be accompanied by evidence that:

1. The beneficiary's exceptional ability (degree of expertise significantly above that ordinarily encountered) in the sciences, arts, or business will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States; and
2. The beneficiary's services in the sciences, arts, or business are sought by an employer in the United States.
3. The DOL has certified there are not qualified U.S. workers who applied for the position.



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Requirements for 2nd Preference

National Interest Waivers – NIW

If the services provided by a member of the professions holding an advanced degree or an alien of exception ability are determined to be in the national interest, the requirement of a job offer, and thus of a labor certification, may be waived. Therefore, the individual's services in the sciences, arts, professions, or business does not have to be sought by an employer in the United States.

An individual may self-petition for a NIW.



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Requirements for 2nd Preference

NIW Physicians

There is a separate blanket waiver for physicians whose work is in the National Interest. If requesting a waiver under this category, it must be established that:

1. The individual will work full-time as a physician in a medically underserved area or in a Veteran's Administration facility; and
2. A federal agency or state department of public health has previously determined that the physician's work in such an area or facility is in the public interest; and
3. The individual will work full-time for an aggregate 5 years in authorized status before being eligible for adjustment of status or an immigrant visa.



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Requirements for 3rd Preference

E31 – Skilled Workers:

- Individuals who are capable, at the time of filing, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

E32 – Professionals:

- Individuals who hold who hold at least a United States baccalaureate degree or a foreign equivalent degree and who are members of the professions.

EW3 – Other Workers (Unskilled):

- Other individuals who are capable, at the time of filing, of performing unskilled labor (requiring less than two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.



Other I-140 Notes

Ability to Pay:

All I-140 petitions which require employer sponsorship must have evidence that the sponsoring employer has the ability to pay the wage specified in the petition.

Labor Certification:

In general, U.S. employers filing EB-2 and EB-3 employment-based Form I-140 petitions must first obtain an approved labor certification application from DOL on behalf of the foreign worker.

Priority Dates:

The priority date is used in conjunction with the Visa Bulletin issued by the Department of State (DOS) to determine when the beneficiary can apply for adjustment of status in the United States or for an immigrant visa abroad.

Other lesser used I-140 Categories:

- Schedule A (a list of pre-certified occupations codified in 20 CFR 656.5 and 656.15)
- E21 Professional Athletes



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Other I-140 Notes

- The approval of a Form I-140 alone does not grant the beneficiary any status in the United States.
- After a Form I-140 is approved the beneficiary will go to a U.S. Consulate to apply for an immigrant visa or, if eligible, a beneficiary in the U.S. may file a Form I-485 to adjust their status to that of a lawful permanent resident.
- To be eligible to apply for an immigrant visa abroad, or to adjust status in the U.S., a visa must be available. The Department of State's visa bulletin takes into consideration the individual's COB, the priority date, and the preference category.



Questions?



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