



**Chen Immigration & Attorneys - The Leader of High Quality Immigration Petition**

Victoria Chen (Managing Partner) | The Green Card Process

# About Victoria Chen

- managing partner of North America Immigration Law Group for 10 years.
- member of the Michigan Bar Association and American Immigration Lawyers Association.

# About North America Immigration Law Group

- Our firm is dedicated to talent-based visa application categories such **EB-1A, EB-1B, EB-2 NIW and O-1**. We have successfully handled **more than 25,000** employment-based immigration petitions.

[https://www.wegreened.com/eb1\\_niw\\_approvals](https://www.wegreened.com/eb1_niw_approvals)

- In 2020, we have obtained almost **4,500 EB-1A, EB-1B, EB-2 NIW and O-1 approvals**.
- So far in 2021, our firm successfully **petitioned more than 4,000 EB-1A, EB-1B, EB-2 NIW and O-1 cases**.
- **Our firm has almost 10,000 five star reviews in various forums and review websites.**
- More than **95% of clients** retained our service through referrals.

# Green Card Process: Two Steps in the U.S.

1. **Filing a Form I-140** Immigrant Petition for Alien Workers with supporting evidence to qualify yourself under certain immigration category (such as EB-1A, EB-1B, or EB-2 NIW).

2. With your I-140 and if your priority date is current, you and each of your dependents will **file your own Form I-485** applications to Register Permanent Residence or Adjust Status.

If the priority date is current, one can file I-485 together with I-140, when I-140 is pending, or after I-140 gets approved.

# What is a Priority Date, and What Does It Mean for it to be Current?

- A priority date is a date that is assigned to an I-140 petition. This date corresponds with the **date that the I-140 petition is filed**, and it is considered "secured" and cannot be lost at the time of I-140 approval.
- The USCIS uses priority dates to advise on **visa availability and I-485 filing eligibility**.
- **If a priority date is current**, visas are available for a petitioner based on their application category (EB-1, EB-2, etc.) and country of birth. Such petitioners are able to file their I-485 application.
- **If a priority date is not current**, a petitioner cannot file the I-485. Instead, the USCIS will, in the month Visa Bulletin, indicate that for a specific application category and country of birth, priority dates are current if they are earlier than a specific date. All I-140 petitioners who have been assigned a priority date that is earlier than the date in the Visa Bulletin can file the I-485. All I-140 petitions with a priority date later than the date in the Visa Bulletin must wait until their priority date becomes current to file the I-485.

# November Visa bulletin (USCIS Adjustment of Status Filing Chart)

Dates for Filing for Employment-Based Adjustment of Status Applications

Employment- Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	01FEB19	C	08JAN13	C	C

# Our Firm's I-140 Categories: An Overview

- EB-2 NIW (National Interest Waiver)
- EB-1A (Alien of Extraordinary Ability)
- EB-1B (Outstanding Professor or Researcher)

# EB-2 NIW (National Interest Waiver)

- Ideal for who were born in any country other than India or China (known in U.S. immigration as Rest of World or "ROW"). This recommendation is because:
  - Compared to EB-1A or EB-1B, EB-2 NIW has a lower standard of law.
  - Priority dates for EB-2 ROW petitioners are generally current.
  - Self petition is allowed.
- Requirements:
  - EB-2 Advanced Degree or Exceptional Ability
  - *Matter of Dhanasar* precedent Decision



# EB-2 Advanced Degree

- One of two ways to satisfy the requirements for the EB-2 category
- Requires one of the following:
  - a U.S. advanced degree (beyond the baccalaureate).
  - a foreign advanced degree (beyond the baccalaureate).
  - a U.S. baccalaureate degree and at least 5 years of progressive post-baccalaureate experience in the specialty.
  - a foreign baccalaureate degree and at least 5 years of progressive post-baccalaureate experience in the specialty.

# EB-2 Exceptional Ability

To claim, must provide evidence of **three** of the following:

1) an official academic record showing that the foreign person 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 letters from current or former employers showing that the foreign person has at least 10 years of full-time experience in the occupation.

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

4) evidence that the foreign person has commanded a salary or other remuneration for services that demonstrate exceptional ability.

5) evidence of membership in a professional association or

6) evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities or professional or business organizations.

# *Matter of Dhanasar* Three Prong NIW Test

- Once EB-2 is satisfied, you must show that you meet the requirements of the NIW subcategory itself
- NIW is evaluated based on a three-prong test set by the *Matter of Dhanasar* precedent decision:
  1. The waiver applicant's proposed endeavor must have both substantial merit and national importance.
  2. The waiver applicant must demonstrate that they are well positioned to advance the proposed endeavor.
  3. The waiver applicant must demonstrate that it would be beneficial to the United States to waive the job offer and labor certification requirements.

# Prong One: Substantial Merit and National Importance

- Focus of this prong is the proposed endeavor,
- **Substantial Merit**
  - Typically, this is an easy requirement to satisfy. The USCIS considers that most work conducted within a STEM field has substantial merit.
- **National Importance**
  - For those working in industry, this requirement can be satisfied in a number of ways through showing that your work offers original innovations that contribute to advancement in the industry, or otherwise have broader implications in the field.
  - For those working in academia, the requirement can be met by papers published in peer reviewed journals and/or conference proceedings.

# Prong Two: Well-Positioned to Advance Proposed Endeavor

- The focus of this prong is on the individual and whether their past successes in their field can reasonably suggest that they will continue their impactful work in the future.
- Best way to satisfy this requirement: showing a continuous record of work and impact prior to the I-140 petition being filed:
  - A continuous and active record of research, publication, and notable citations
  - A record of work being implemented or commercialized in industry (patents, technology transfers, etc.)
  - Evidence of work being used in clinical trials or guidelines and thereby impacting the greater medical community
  - A strong educational background (while a Ph.D. is not required, having a Ph.D. may be considered as showing that the individual is well-positioned to advance their proposed endeavor)
  - Other evidence showing one is well-positioned to advance the proposed endeavor such as funding, grants and awards.

# Prong Three: It Is Beneficial to Waive the Labor Certification Requirement

- This prong is considered a "balance" test between the benefits of requiring the individual to obtain a Labor Certificate and the benefits of waiving the Labor Certification requirement (in other words, granting the National Interest Waiver).
- Here, the USCIS officer is meant to weigh the benefits of both options and determine whether the petition has shown sufficient national interest benefits, thus making it beneficial to approve the National Interest Waiver.

# EB-1A (Aliens of Extraordinary Ability)

- Self-petitioned EB-1 sub-category
- Ideal for those born in India or China due to visa availability
  - EB-2 priority dates for India and China are retrogressed, which often can cause delays of at least 3-10 years between the I-140 filing and the I-485 filing
  - EB-1 priority dates are current now, and even when they are retrogressed, the timelines for EB-1 India or China are usually faster than EB-2
- Two Part Analysis of EB-1A Petitions (*Kazarian v. USCIS*)
  - Part 1: Satisfying at least 3 out of 10 regulatory criteria
  - Part 2: Passing the "Final Merits Determination" (FMD)

# Part One: EB-1A Criteria

To claim, must provide evidence of **three** of the following:

1. Evidence of receipt of lesser nationally or internationally recognized **prizes or awards** for excellence
2. Evidence of your **membership** in associations in the field which demand outstanding achievement of their members
3. Evidence of **published material about you** in professional or major trade publications or other major media
4. Evidence that you have been asked to **judge the work of others**, either individually or on a panel
5. Evidence of your **original** scientific, scholarly, artistic, athletic, or business-related **contributions of major significance** to the field
6. Evidence of your **authorship of scholarly articles** in professional or major trade publications or other major media
7. Evidence that your work has been **displayed at artistic exhibitions or showcases**
8. Evidence of your performance of a **leading or critical role** in distinguished organizations
9. Evidence that you command a **high salary** or other significantly high remuneration in relation to others in the field
10. Evidence of your **commercial successes in the performing arts**



# EB-1B (Outstanding Professor or Researcher)

- Employer-petitioned EB-1 subcategory
  - Lower standard in practice than EB-1A, thus making it an easier EB-1 category to get approved
- Recommended for individuals born in India or China
- Two Part Analysis of EB-1A Petitions (*Kazarian v USCIS*)
  - Part 1:
    - Satisfying 2 out of 6 regulatory criteria
    - Evidence of having at least 3 years of research or teaching experience in the field.
    - Offer letter for a permanent research or tenured/tenure-track professor position
    - Employer must agree to act as petitioner on and sign the Form I-140
  - Part 2:
    - Satisfying the "Final Merits Determination" (similar requirements as EB-1A)

# EB-1B Criteria

To claim, must provide evidence of **two** of the following:

1. Evidence of receipt of major prizes or awards for outstanding achievement
2. Evidence of membership in associations that require their members to demonstrate outstanding achievement
3. Evidence of published material in professional publications written by others about the alien's work in the academic field
4. Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
5. Evidence of original scientific or scholarly research contributions in the field
6. Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

# EB-1B Position Requirements

a. For EB-1B Outstanding Researcher, one would have to be working in a **permanent research** position at a university or in industry.

b. For EB-1B Outstanding Professor, one would have to be working in a **tenured** or **tenure-track faculty** position at a university.

For the purpose of EB-1B, the USCIS defines a permanent position as a position in which either

(a) the petitioning employer intends to **seek continued funding** for the beneficiary's position and that they have **a reasonable expectation that funding will continue**, or

(b) the petitioning employer has a **reasonable expectation that the beneficiary's employment will continue** unless there is good cause for termination and that there is no fixed termination date for the beneficiary's employment.

# EB-1B Petitioner Requirements: University

1. If the beneficiary is seeking to qualify as an “**outstanding professor**”:
  - a. A copy of the beneficiary's original employment **offer letter**. It should specify that the beneficiary's position is tenured or tenure-track; and
  - b. **Employment confirmation letter** specifying that the beneficiary's position is tenured or tenure-track. Our firm will prepare this letter.
2. If the beneficiary is seeking to qualify as an “**outstanding researcher**”:
  - a. A copy of the beneficiary's original employment **offer letter**; and
  - b. **Employment confirmation letter** specifying that the position is a permanent (no fixed termination date) research position. Our firm will prepare this letter.
3. Documents showing that the petitioning employer has the **capacity to pay** the beneficiary's salary, usually in the form of a financial report on the university's website.
4. A completed **Form I-140** signed by a representative of the petitioning employer.
5. [OPTIONAL] A completed **Form G-28** signed by a representative of the petitioning employer.

# EB-1B Petitioner Requirements: Company

1. A copy of the beneficiary's original employment **offer letter**, preferably specifying that:
  - a. The beneficiary's position is **permanent** (no fixed termination date);
  - b. The beneficiary's position can be classified as a **research position** and the beneficiary has **research duties**.
2. **Employment confirmation letter** (to be prepared by our firm)
3. Documents showing that the petitioning employer has the **capacity to pay** the beneficiary's salary
5. Documents demonstrating that the petitioner employs at least **3 full-time researchers** (not including the beneficiary).
6. Evidence that the petitioner has documented **accomplishments an academic field**.
7. A completed **Form I-140** signed by a representative of the petitioning employer.
8. [OPTIONAL] A completed **Form G-28** signed by a representative of the petitioning employer.

# Final Merits Determination (FMD)

- Established by the precedent decision *Kazarian v USCIS*, this is the second step of EB-1A and EB-1B adjudications. The officer will consider this step after having determined that the relevant criteria for EB-1A or EB-1B have been satisfied.
- For this part of the test, the adjudicator must review and consider the **totality of the submitted evidence**. The adjudicator has full discretion in evidentiary analysis in this section, but per the *Matter of Kazarian* decision, the goal is to determine if there is **a preponderance of the evidence** that the I-140 petitioner (in the case of EB-1A) or beneficiary (in the case of EB-1B) has met the requisite level of expertise for the category.

# Minimum Requirements for NIW, EB-1A, or EB-1B

- Generally, there is no predetermined set of credentials that would guarantee an I-140 approval.
- However, when evaluating our potential clients' credentials, we usually look for the following:
  - An advanced degree or evidence of exceptional ability
  - Publications
  - Independent citations (citations for a paper not from you or your co-authors of the paper) to show that your research has impact beyond your inner circle
  - Prospective employment (current or future) in a research-oriented position in your field
  - Non-citation implementation of your work (such as commercialized patents/technology transfer agreements, use of your work in clinical trials/guidelines, contact from other researchers interested in using your work, etc.)
  - Peer reviews
  - Conference presentation
  - Fundings/grants
  - Awards

# Timelines

- Most of our clients take an average of **1-4 months** of active preparation to prepare their cases
- USCIS processing time for I-140 -- changes substantially over time

<https://egov.uscis.gov/processing-times/>

- EB-2 NIW - Nebraska Service Center: 10.5 to 15.5 months | Texas Service Center: 12.5 to 29 months
- EB-1A\* - Nebraska Service Center: 10 to 18.5 months | Texas Service Center: 13 to 30.5 months
- EB-1B\* - Nebraska Service Center: 9 to 16 months | Texas Service Center: 5.5 to 14 months
- \*EB-1A and EB-1B have a Premium Processing option, which shortens I-140 processing to 15 calendar days for a USCIS fee of \$2,500.
- I-485 processing time: 10-12 months
- I-131 (Advanced Parole) /I-765 (Employment Authorization Document) processing time: Hard to predict but generally 3-6 months.



# Timeline of Case Preparation with our Firm

## Standard Preparation (EB-1A, EB-1B, NIW)

- 10 business days to draft 4-6 recommendation letters
- 10 business days to draft the petition letter
- 1-3 business days per set of revisions
- 24 business hours to respond to messages or queries

# What Happens After Filing the I-140

- After the I-140 is filed, you would have to wait for a response from the USCIS regarding the case, which will likely either be:
  - An RFE (Request for Evidence) or NOID (Notice of Intent to Deny)
  - An Approval
- The USCIS can directly deny an I-140 petition, but in our experience, this is rare and usually only occurs if some important required forms or documents are not submitted.

# RFE/NOID

## Request for Evidence (RFE)

- A statement issued by the USCIS indicating that insufficient evidence was submitted for a comprehensive adjudication of the petition, and more evidence needs to be submitted to the USCIS.
- We usually have 84 days (if RFE is faxed) or 87 days (if RFE is mailed) to prepare and mail a response.

## Notice of Intent to Deny

- A statement issued by the USCIS indicating that the USCIS has determined that the applicant is unlikely to meet the requirements set out by a given category. (Note, this does **not** mean that the case will definitely be denied)
- We usually have 30 days (if NOID is faxed) or 33 days (if NOID is mailed) to prepare and mail a response.

\*Our services include responding to an RFE/NOID. If an RFE/NOID is issued, our client's cases are transferred to specialized teams to review the notice, advise on the case, and prepare for a response.

\*\*After receiving the RFE/NOID response, the USCIS will usually issue a final decision in around 60 days

# I-140 is Denied: What Happens Next?

- If your I-140 is denied, you can either refile the petition, appeal the denial decision with the Administrative Appeals Office (AAO), or file a motion to reconsider the denial decision.

# I-140 Is Approved: What Happens Next?

If your I-140 is approved and your priority date is current, you can proceed to the next step of the process:

## I-485

- Appropriate for individuals who are in the U.S.
- USCIS Fees
  - \$1,225 (over 14 years of age)
  - \$1,140 (below 14 years of age if not filed with the principle I-485 applicant)
  - \$750 (below 14 years of age if filed with the principle I-485 applicant)
- Attorney fees
  - \$1,500 for principle I-485 applicant
  - \$1,200 per dependent
- **Or you can choose to concurrently file I-140 and I-485 at the same time or file I-485 when I-140 is pending.**

## Immigrant Visa Processing (IVP)

- Appropriate for individuals who are outside the U.S.
- USCIS Fees
  - \$345 (IV Processing fee per applicant)
  - \$220 (USCIS Immigrant Visa fee per applicant)
- Attorney fees
  - \$1,800 for principle IV applicant
  - \$700 per dependent
- Based on our firm's experience and data, IVP usually takes 10 months to process.

# Common Nonimmigrant Visa Concerns

- Do you need to have a visa that permits immigrant intent (H-1B, O-1, L-1) to apply:
  - **No**. While visas such as F-1 or J-1 only permit nonimmigrant intent, this does not prohibit you from applying for a green card while you have F-1 or J-1 status. An F-1 or J-1 holder must have nonimmigrant intent at the time they **apply** for the visa or **enter the U.S.** with the visa, but they can change their minds later and develop immigrant intent.
- Can F-1 or J-1 status be extended during the process?
  - **It depends**. **Before the I-140 is filed**, yes, you are free to extend your status.
  - **After the I-140 is filed**, it is usually up to your university or designated visa officer. If they have no problem filing for an F-1 or J-1 extension after you have filed the I-140, then usually you can obtain the extension without much issue based on our experience.
  - **After the I-485 is filed**, you cannot extend an F-1 or J-1 status because F-1 and J-1 require nonimmigrant intent, and the I-485 is a clear demonstration of immigrant intent.

# Common Nonimmigrant Visa Concerns, cont.

- Will the I-140/I-485 filing/approval/denial invalidate your current nonimmigrant visa?
  - **No.** Your nonimmigrant visa should stay valid until its date of expiration.
- Can you change status during the process?
  - If you change status to a visa that does not prohibit immigrant intent (H-1B, O-1, L-1), **yes**, you can change status without a problem even if the I-140 or I-485 are filed. (\*Note that after the I-485 is filed, you should only obtain such visa status that does not prohibit immigrant intent through the change-of-status process within the U.S.)
  - For a change of status to a visa that does not allow immigrant intent (F-1, J-1, B1/B2), this is **not recommended**.

# Common Nonimmigrant Visa Concerns, cont.

- J-1 Visa Subject to INA 212(e)
  - If your J-1 is subject to the INA 212(e) two year home residency requirement, this should not affect your ability to file the I-140.
  - However, you will either have to **satisfy or waive** the requirement **before being eligible to file the I-485**.



# You Are Ready to Proceed: Why Choose Our Firm for This Process?

1. We offer the most comprehensive service to build a strong I-140 petition for you.
2. We have close to a 100% I-140 approval rate based on twenty thousand cases approved over the past few years.
3. The large number of approvals offers us unprecedented insight into USCIS adjudication trends.
4. We have worked with hundreds and thousands of clients with credentials and backgrounds similar to yours, allowing us to understand and discuss your work with great accuracy.
5. Each case is carefully handled by a specific attorney that is familiar with your situation and credentials and we don't allow paralegals to give legal advice.
6. We offer clear and strict deadlines for case preparation on our end, so you can be assured we would not needlessly delay the case.
7. Our firm strives to attract clients based solely on word-of-mouth, and we thus work hard to ensure that we provide a green card application experience that our clients are happy to share with their friends and colleagues.

Q&A