

# IMMIGRATION LAW OFFICES OF RON KATIRAEI

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## EB-2 VISA (National Interest Waiver- NIW)

The EB-2 visa, like the EB-1 visa, confers Lawful Permanent Residency (LPR) on its holder.

However, while the EB-1 category is reserved for individuals who exhibit an extraordinary ability, are outstanding professors or researchers, or are multinational executives and managers, the EB-2 category is reserved for individuals in professions holding an advanced degree or its equivalent, or a foreign national who has exceptional ability. EB-2 visa applicants generally must have an approved labor certification as well as a job offer. However, some applicants may be eligible for a National Interest Waiver. Applicants seeking a national interest waiver are requesting that the Labor Certification be waived because it is in the interest of the United States. Though statute does not define the jobs that qualify for a national interest waiver, national interest waivers are usually granted to those who have exceptional ability (not to be confused with extraordinary ability) and whose employment in the United States would greatly benefit the nation. To receive a NIW, you, as the applicant, must meet at least three of the following criteria:

- Official academic record showing possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to your area of exceptional ability
- Letters documenting at least 10 years of full-time experience in your occupation
- A license to practice your profession or certification for your profession or occupation
- Evidence that you have commanded a salary or other remuneration for services that demonstrates your exceptional ability
- Membership in a professional association(s)
- Recognition for your achievements and significant contributions to your industry or field by your peers, government entities, professional or business organizations
- Other comparable evidence of eligibility is also acceptable.

Furthermore, those seeking a NIW must also demonstrate that it is in the national interest that they work permanently in the U.S. While statute, regulations, or legislative history do not define the term "national interest," USCIS requires that you, as the waiver applicant:

- Seek employment in an area that has substantial intrinsic merit
- Must demonstrate that the proposed benefit to be provided will be national in scope
- Must demonstrate that it would be contrary to the national interest to potentially deprive the prospective employer of your services by making available to U.S. workers the position that you, as waiver applicant, seek.

In other words, you, as the waiver applicant, must establish that you will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. For example, a physician who agrees to work full-time in an area with a shortage of healthcare professionals would qualify for an NIW. Those seeking a national interest waiver may self-petition (they do not need an employer to sponsor them) and may file their labor certification directly with USCIS along with their Form I-140, Petition for "Foreign National" Worker. As an EB-2 visa holder, your spouse and children under the age of 18 may also be admitted to the United States under E-21 and E-22 immigrant status, respectively. During the process where you and your spouse are applying for LPR status, your spouse is eligible to file for an Employment Authorization Document (EAD).