



Understanding the National Interest Waiver: Key Points from USCIS Data

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What is the National Interest Waiver (NIW)?

In the world of U.S. immigration, the National Interest Waiver (NIW) offers a promising way for people with advanced degrees or exceptional abilities to get a green card without going through the long and complicated PERM labor certification process. The NIW has become especially popular recently because it is often seen as an easy and quick route to permanent residency in the United States. New data from the U.S. Citizenship and Immigration Services (USCIS) gives us important insights into the trends and common misunderstandings about the NIW.

Who Can Apply for a NIW?

While it is appealing to bypass the complicated and time-consuming PERM process, the NIW is not the best choice for everyone. As such, it is important to understand the rules about NIW before you decide to proceed down this path. You could be eligible for NIW if you have an advanced degree, like a Master's or PhD, and can also prove:

1. Your work is inherently important and of national significance in the U.S.;
2. You are well-positioned to advance your proposed endeavor; and,
3. The benefit to society you will bring outweighs the United States' interest in pursuing the typical steps associated with the PERM labor certification process (which involves a test of the labor market, to show that you are not taking a job from a U.S. worker).

If your area of expertise has a national impact in the U.S., and if your work in this area has the potential to influence your entire industry, this provides an exceptional starting point for considering an NIW. You also are required to show a strong record of success; for example, this could include recognition in the form of a patent or award for your work.

Trends in NIW Applications

The NIW is popular among professionals, especially researchers, scientists, and entrepreneurs whose work significantly benefits the U.S. In addition, employers may prefer to sponsor an NIW over the PERM process because PERM is historically expensive, time-consuming, and requires significant input and involvement from the employer. Recently,



the volume of NIW applications has increased significantly. For example, from fiscal year 2022 to 2023, NIW filings almost doubled, while PERM-based applications in the same time period dropped. This is likely because employers find the NIW route more appealing, especially for workers in Science, Technology, Engineering, and Mathematics (STEM) fields.

Examples of Successful NIW Cases

While the eligibility criteria outlined above provide a good starting point for an NIW, there is no guarantee that someone who meets those criteria will have an approvable case. Within the STEM universe, our firm has achieved successful results for researchers and scientists who have made significant contributions to their field; for example, a scientist whose area of focus includes landslide research and mitigation of natural disasters, or a researcher who does innovative work in renewable energy technologies. In these successful cases, the areas of work have potential to positively affect public health and environmental sustainability.

Engineers and technologists who contribute to significant advancements in infrastructure can also receive NIWs; for instance, our firm received an approval for an engineer who developed a new semiconductor technology with wide-ranging applications that contribute to major infrastructure projects with substantial benefits to the US.

Outside of the STEM realm, academics and business professionals may be successful with a NIW when their work is both critical and has the potential to positively affect the US economy; for example, we have received NIW approvals for a financial professional whose models have been implemented across multiple businesses and increased efficiency and revenue, and a patent attorney whose work enables further discovery and development within the US. The above examples are not exhaustive, but serve to exemplify the range of professionals who have benefited from moving forward with an NIW instead of a PERM process.

Impact of Policy Changes on STEM Fields

Most NIW applicants come from STEM backgrounds. These professionals typically work on cutting-edge research and bring specialized skills that help the U.S. stay competitive in innovation. In early 2022, USCIS updated its policies to clarify the ways in which STEM jobs could qualify for NIWs. This change, coupled with an executive order from President Biden to expand employment-based categories for fields like artificial intelligence, have led more employers to embrace the NIW permanent residency option over the traditional PERM process.



Comparing NIW and PERM Labor Certification

The NIW process typically moves more quickly than the PERM labor certification. The PERM process involves several steps, including getting a Prevailing Wage Determination and testing the labor market, which can take 18-24 months and potentially be interrupted by employer layoffs or government shutdowns. In contrast, preparing an NIW petition still may take considerable time to prepare and submit, but most of the time, such a petition can be submitted within a few months, and unlike the PERM, it is possible to request expedited processing (45 business days) from the government.

Challenges and Considerations

Though the NIW may offer a faster path to a green card for some, the application process can still be complex and burdensome. Applicants must carefully document their qualifications and explain how their work meets the NIW criteria. In addition, since immigration policies and adjudication trends can change quickly and with little notice, it is especially important for potential applicants to stay updated and seek expert advice.

Backlogs and Wait Times: The NIW is part of the employment-based second preference category (EB-2). For people from countries with long backlogs, including India or China, the NIW is unlikely to provide a substantial benefit in terms of timing. By way of example, the wait time for someone from India in the EB-2 category can be 10-20 years, whereas someone from the United Kingdom with an EB-2 process could more reasonably anticipate receiving a green card in a couple years under the same employment-based preference category.

High Standards and Denials: Even highly dedicated individuals with impressive credentials may not meet the strict NIW standards. Due to the USCIS policy changes and the executive order mentioned above, between fiscal year 2022 and fiscal year 2023, receipts for NIW requests rose by an impressive 81% - however, among I-140 denials involving STEM job types in fiscal year 2023, 88% were NIWs. While this should not discourage potential applicants from exploring the NIW, it is crucial to understand the high standards involved and their potential implications on the likelihood of a case's success.

Looking Ahead

As the global economy becomes increasingly interconnected, NIW holders will play a significant role in driving innovation and growth. Policymakers are consistently seeking ways to make the immigration process smoother while maintaining national security and economic health, and as such, despite its challenges, the NIW remains a vital tool for attracting top talent to the U.S. If you are a researcher, entrepreneur, or STEM professional, understanding the NIW may help you more confidently navigate the immigration process and contribute your invaluable talents to the U.S.