
EB-2 NIW Visa Guide: A Path to U.S. Permanent Residency

For individuals with an advanced degree or exceptional ability who can demonstrate a substantial positive impact to the U.S.

Do you have an advanced degree (master's, PhD, etc), or a four-year bachelor's degree plus five years of progressive work experience, and doing important work that will benefit the national interest of the United States? If the answer is yes, you may be eligible for the EB2 NIW National Interest Waiver program. The Employment-Based Second Preference National Interest Waiver (EB2 NIW) program is an integral part of the United States immigration framework, the EB2 NIW program offers a path to lawful permanent residency for individuals with advanced degrees or exceptional ability, bypassing the rigorous labor certification process. This article aims to shed light on the EB2 NIW program by dissecting its eligibility criteria, application process, timeline, cost, and potential benefits.

What is EB-2 NIW National Interest Waiver?

We've all heard of EB2. But what is the EB2 National Interest Waiver?

In short, the EB2 National Interest Waiver (NIW) is a shortcut to EB2 green card. By proving that your presence in United States will be in the National interest of the United States, EB2 NIW lets you skip the line and waive the PERM process altogether. Sounds too good to be true? Perhaps it is.

To get the EB2 NIW, you must prove that what you do will "benefit the national interest." Here, "national interest" means "having a substantial positive impact on the United States" such that it makes sense to bypass the traditional PERM recruitment process. In a traditional EB2 application, a foreign worker's U.S. employer sponsor typically has to test the local labor market through advertising and recruitment to determine **there are no minimally qualified U.S. workers that are able and willing to take the job**. This process is managed by the Department of Labor via the Permanent Electronic Review Management (PERM) system. The PERM process can be time consuming. Furthermore, a PERM EB2 application must be sponsored by a U.S. employer. This creates loads of challenges for foreign workers.

However, foreign nationals whose work benefit the U.S. "national interest" do not need to go through the lengthy PERM process. Furthermore, EB2 NIW allows **self-petition**,

which means that the applicant does not even need to have an employer sponsor. Lastly, EB2 NIW has **no prevailing wage requirements**.

Who qualifies for EB-2 NIW National Interest Waiver? ([USCIS Official Website](#))

Requirement One - Advanced Degree or Exceptional Ability

In order to be eligible for an NIW petition, you must either have an "advanced degree" or "exceptional ability" in the sciences, arts or business.

1. **An advanced degree** means a Master's or a PhD, JD, MD, etc. Short of that, a Four year's bachelor's degree plus five years of progressive work experience would also qualify.
2. **Exceptional ability** is a bit more complex to prove. Be prepared to show you qualify for **3 of the following criteria:**
 - Official academic record showing that you have 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.

Requirement Two - National Interest Waiver

In addition to providing evidence of an advanced degree or exceptional ability (described above), you must also meet the following **3 National Interest Waiver criteria** below in order to demonstrate that it is in the national interest that USCIS waive the requirement of a job offer, and thus the labor certification.

1. **The foreign worker's proposed endeavor has both substantial merit and national importance;**
2. **The foreign worker is well positioned to advance the goals of their work; and**
3. **On balance, it would be beneficial to the United States to waive the job offer and labor certification requirements.**

Elaboration on each of the three National Interest Waiver (NIW) criteria with examples

- 1. Substantial Merit and National Importance:** This means that your work or project should have significant value and benefit for the entire United States. It should address an issue or contribute to a field that is vital to the nation. For example:
 - If you are a scientist working on a groundbreaking medical research project that could lead to a cure for a widespread disease, this would be of substantial merit and national importance.
 - An entrepreneur creating a technology that can improve national cybersecurity might also meet this criterion.
- 2. Well Positioned to Advance the Goals:** This criterion is about demonstrating that you are the right person to carry out the work or project, and that you have the skills and experience to make it successful. For instance:
 - If you are an architect with a history of designing eco-friendly buildings and you want to work on sustainable infrastructure projects, your expertise could be considered well-positioned to advance the goals of environmental sustainability.
 - A foreign-born teacher specializing in bilingual education, aiming to improve language education in underserved communities, could be seen as well-positioned to advance the goal of educational equality.
- 3. Beneficial to the United States to Waive Job Offer and Labor Certification:** This means that waiving the usual requirement of a job offer and labor certification for you should ultimately be advantageous for the United States. For example:
 - If your work is in a field where there's a shortage of qualified professionals in the U.S., such as certain healthcare specialties or technology sectors, waiving the job offer requirement could be beneficial.
 - If your project could lead to significant economic growth, job creation, or innovation, it could be in the U.S. national interest to waive the usual labor certification process.

In summary, to qualify for a National Interest Waiver, you need to show that your work or project is important to the entire country, that you are well-suited to carry it out, and that it benefits the United States to waive the usual job offer and labor certification requirements for you.

How does the EB-2 NIW process work?

Your employer or attorney must file a Form I-140, Petition for Alien Worker. If you are filing the NIW, you may also “self-petition,” that is to file the I-140 on your own behalf. You must also file a partially filled out copy of the new version of ETA9089 as part of the NIW filing process. In addition to the forms, it is critical to prepare a thorough petition explaining how you meet the regulatory criteria for EB2 NIW. Work with an experienced attorney to come up with a strategy for your case.

How Difficult is the EB2 NIW?

Securing an EB2 NIW visa can be a challenging task due to the stringent criteria set by the United States Citizenship and Immigration Services (USCIS). The specifics of "exceptional ability" and "national interest" are particularly complex, requiring substantial supporting documentation to prove the merits of the case. The applicant must demonstrate that they are significantly more proficient in their field than an average professional, and their proposed endeavor must considerably benefit the U.S. Moreover, this visa category does not have a clearly defined success rate, as each application's approval heavily relies on the unique merits of the individual case. Therefore, while obtaining an EB2 NIW visa is not impossible, it is indeed subject to strict scrutiny and can be fairly challenging.

Step-by-Step Guide for the EB2 NIW Program

The application process for the EB2 NIW program involves a series of well-defined steps:

1. File an Immigrant Petition for Alien Worker (Form I-140) with the U.S. Citizenship and Immigration Services (USCIS). (The NIW applicant first will need to pay \$700 or \$2500 extra in case of premium processing to file Form I-140. Once I-140 is approved, the path forward will vary depending on where the applicant is living.)
2. Provide evidence demonstrating your advanced degree or exceptional ability, and how your proposed endeavor is in the national interest.
4. Wait till the visa bulletin to become current for your country of origin.
3. Once the I-140 petition is approved, depending on your location and visa availability, either file an Adjustment of Status application (Form I-485) with USCIS, or apply for an immigrant visa at a U.S. embassy or consulate.

What are the Advantages of the EB2 NIW Green Card?

The EB2 NIW program offers several distinct advantages. Most notably, it relieves the applicant from the obligation of having a job offer and undergoing the labor certification process. This provision substantially expedites the green card process and offers more flexibility for the applicant.

While the EB2 NIW program may seem like an ideal choice for many, it's important to remember that immigration law is complex and constantly evolving. It is highly recommended to seek professional advice to navigate this process successfully and to clarify any doubts or concerns.

In the realm of immigration, knowledge indeed equals power. A firm understanding of the EB2 NIW program's intricacies can help turn the dream of living and working in the United States into a reality.

What are the Differences between EB2 NIW and EB1A?

Both the EB-2 National Interest Waiver (NIW) and the EB1A are immigrant visa categories that allow foreign nationals to apply for U.S. permanent residency without a job offer. However, they cater to different types of applicants and have varying eligibility criteria.

The EB2 NIW is suitable for professionals with advanced degrees or exceptional ability in their field, with the added condition that their proposed endeavor should be of national interest to the U.S. While the EB2 NIW does not require a job offer or labor certification, it does require a demonstration of the applicant's significant proficiency in their field of expertise and a substantial benefit to the U.S. from their proposed endeavor.

On the other hand, the EB-1A category is specifically designed for foreign nationals with extraordinary ability in the sciences, arts, education, business, or athletics. This category requires the applicant to demonstrate sustained national or international acclaim, with their achievements recognized through extensive documentation. Unlike the EB2 NIW, the EB-1A does not require the applicant's endeavor to be of U.S. national interest.

In summary, while both categories offer the advantage of not being tied to a specific job offer, the EB-1A is geared towards individuals of extraordinary ability and does not tie the application to a specific national interest requirement, as is the case with the EB2 NIW.

Unlike many other employment-based visa categories, the EB2 NIW category does not necessitate a job offer or a sponsoring employer in the U.S. This is one of the unique factors that sets this category apart. Therefore, individuals can self-petition, meaning they apply on their own behalf, providing evidence to demonstrate their advanced degree or exceptional ability, and how their proposed endeavor is in the national interest of the U.S. However, despite not requiring a sponsor, the EB2 NIW category has a stringent set of eligibility criteria that applicants must meet, and therefore, professional guidance from an experienced immigration attorney is highly recommended to navigate this complex process.

What Should You Do While You Wait —Maintaining Nonimmigrant Status While NIW is Pending

While your EB-2 National Interest Waiver (NIW) is pending, it is crucial to maintain your current nonimmigrant status. This is because the NIW process can take a significant amount of time, and there's no guarantee of approval. The U.S. immigration law requires you to have a valid immigration status while in the U.S. If you are, for example, on an H-1B or F-1 visa when you apply for your NIW, you should continue to maintain the terms of that status until your NIW application has been approved and you've completed the transition to permanent resident status. By doing so, you protect yourself from the risk of falling 'out of status', which could lead to serious immigration consequences, including deportation or future ineligibility for U.S. visas. As always, it's recommended to consult with an experienced immigration attorney to understand your specific circumstances.

Timeframe for EB2 NIW Approval

The processing time for an EB2 NIW application can vary significantly depending on a number of factors, including the workload of the processing center and the specifics of the

individual case. As per the U.S. Citizenship and Immigration Services (USCIS), the average processing time for an Immigrant Petition for Alien Worker (Form I-140), which is the initial step of the EB2 NIW application process, can range anywhere from 4 to 9 months. Once the I-140 is approved, you'll need to wait for the visa bulletin to become current. The timeline for the visa bulletin to be current differs for every country. [Check the latest update on Visa Bulletin to find out your proximate wait time.](#) Lastly, the subsequent process of adjusting status or applying for the visa can take anywhere from 6 months to 30 months, depending on USCIS processing speed.

It's important to note that each case is unique and processing times can change without notice. Therefore, it's always advisable to plan accordingly and consider potential delays when applying for the EB2 NIW

In comparing the EB-2 National Interest Waiver (NIW) with the traditional EB-2 PERM Labor Certification route, one of the most notable differences is the timeline. The EB2 NIW generally has a faster processing time due to the waiver of the PERM Labor Certification requirement, a significant step in the EB-2 process. The PERM labor certification involves a test of the labor market to prove that there are no qualified U.S. workers available for the position, a process that can take several months or even a year. By eliminating this step, the EB2 NIW can potentially save a significant amount of time in the green card process. However, the total processing time for both EB-2 routes can still vary greatly depending on case specifics and the current workload of USCIS. Therefore, while the EB2 NIW can be quicker, there are many factors at play, and each individual applicant's case can differ.

How long does it take to get the EB2 NIW?

Following the approval of the EB2 NIW, the next stage involves filing the Adjustment of Status application (Form I-485) with USCIS or applying for an immigrant visa at a U.S. embassy or consulate, depending on your location and visa availability. The processing time for the I-485 form varies according to numerous factors such as the specific case details and the current workload of USCIS. On average, it can take anywhere from 6 to 12 months for the I-485 to be processed and approved. However, these are average timelines and actual processing times can be shorter or longer. It's crucial to remember that each case is unique, and processing times can change without notice. Consequently, applicants should always plan and prepare for potential delays in the process.

The processing time for an EB-2 National Interest Waiver (NIW) application does not vary by nationality. It primarily depends on the workload of the processing center and the specifics of the individual case. The average processing time for an Immigrant Petition for Alien Worker (Form I-140), the first part of the EB2 NIW application process, ranges from 4 to 9 months. Following the approval of the I-140, the subsequent step of adjusting status or applying for the visa typically takes an additional 6 months to a year.

However, for Indian nationals specifically, there may be a prolonged waiting period due to the annual limit on the number of Green Cards issued per country and the high demand. This phenomenon, often referred to as 'retrogression', can result in an extended waiting period, potentially several years, before an immigrant visa number becomes available, even after the I-140 has been approved.

It's essential to note that these timelines are average estimates, and the actual processing times may vary. Each case is unique and processing times can change without notice. Therefore, applicants are advised to plan accordingly and anticipate potential delays when applying for an EB2 NIW visa.

The processing time for an EB-2 National Interest Waiver (NIW) application is generally not determined by nationality but primarily depends on the workload of the processing center and the specifics of the individual case. The average processing time for an Immigrant Petition for Alien Worker (Form I-140), the first part of the EB2 NIW application process, ranges from 4 to 9 months. Following the approval of the I-140, the subsequent step of adjusting status or applying for the visa typically takes an additional 6 months to a year.

However, for Chinese nationals specifically, there may be a prolonged waiting period due to the annual limit on the number of Green Cards issued per country and the high demand. This phenomenon, often referred to as 'retrogression', can result in an extended waiting period, potentially several years, before an immigrant visa number becomes available, even after the I-140 has been approved.

It's essential to note that these timelines are average estimates, and the actual processing times may vary. Each case is unique and processing times can change without notice. Therefore, applicants are advised to plan accordingly and anticipate potential delays when applying for an EB2 NIW visa.

While a degree in a STEM (Science, Technology, Engineering, and Mathematics) field can certainly strengthen an EB-2 National Interest Waiver (NIW) application, it is not an absolute requirement. The key criteria for an NIW petition involve demonstrating that the applicant's work is of national interest, they are well-positioned to advance their proposed endeavor, and it would be beneficial to the United States to waive the job offer and labor certification requirements. Applicants from a wide range of disciplines, including but not limited to STEM fields, can satisfy these criteria. It is important to note that the strength of the evidence provided and the potential impact of the applicant's work on the United States are critical factors in the adjudication process.

Yes, entrepreneurs can indeed apply for an EB-2 National Interest Waiver (NIW). The United States Citizenship and Immigration Services (USCIS) recognizes that entrepreneurs can serve the national interest by driving job creation, innovation, and economic growth. Therefore, an entrepreneur, or a self-employed individual with a significant ownership interest in their enterprise, may qualify for an NIW if they can demonstrate that their business venture will substantially benefit the U.S. nation. However, like all EB2 NIW applicants, entrepreneurs must meet the criteria of having their work be of national interest, showing that they are well-positioned to advance the proposed endeavor, and establishing that waiving the job offer and labor certification requirements would be beneficial to the U.S. As always, each case is unique, and applicants are advised to consult an immigration attorney to assess their specific circumstances.

The processing time of both EB2 NIW and EB1A can vary significantly, depending on a plethora of factors such as the specifics of the individual case, the workload of the processing center, and more. Typically, the EB2 NIW may have a faster processing time compared to the EB1A, primarily because it waives the labor certification process that could potentially lengthen the timeline. However, the EB1A category, meant for individuals with extraordinary

ability, doesn't require a job offer, which can also expedite the process. It is important to remember that the processing time for each category can fluctuate based on USCIS workload and individual case complexities. Therefore, while on average the EB2 NIW might be quicker, it is not a hard and fast rule, and the processing time for each individual applicant can differ. Given the complexity of the immigration process, it is always advisable to seek professional advice to understand which category best suits your qualifications and circumstances.

Given the complexity of the EB2 NIW program, accuracy in the application process is paramount to enhance the chances of approval. An experienced immigration attorney can be instrumental in this process, guiding you through each step, ensuring all documentation is correctly prepared and submitted, and advocating on your behalf. Remember, every detail matters in immigration cases, and a minor oversight can result in significant delays or even a denial of your application. Therefore, while the task may seem daunting, with the right guidance and meticulous preparation, the dream of obtaining an EB2 NIW visa can indeed become a reality.

Can Family of EB-2 Visa Holders also Apply for Green Cards?

Yes, spouse and unmarried children under the age of 21 may accompany the principal applicant.

- Ai Mo Legal Consulting
- Ai Mo Innovation Lyceum
- Ai Mo Innovation Sea Change
- Ai Mo Innovation Soft Cottage

Who we are:

Ai Mo Innovation Consultants (SMC-Private) Limited is registered with Securities and Exchange Commission of Pakistan under the Corporate Universal Identification No. 0151273. Ai Mo Innovation Consultants provides innovative consulting, trainings, digital services, networking opportunities as well as a full suite of skills that helps to unlock the growth potential of individuals, enterprises, state bodies and educational institutions. We guide individuals and companies looking for innovative solutions and effective change practices to successfully achieve their transformation and accelerate their endeavors. We provide a range of services for individuals starting from professional growth opportunities to career counselling and for businesses from strategy conception (strategy development, intellectual logistics and fund raising) to strategy in action (digital transformation, project management and execution). Ai Mo Innovation Consultants has four domains.

1- Ai Mo Legal Consultancy

(Law Firm)

2- Ai Mo Innovation Lyceum

(Education and Career Counselling Service)

3- Ai Mo Innovation Sea Change

(Business Consulting and Digital Transformation Services)

4- Ai Mo Innovation Soft Cottage

(Software House and IT Consultancy)



- Ai Mo Legal Consulting
- Ai Mo Innovation Lyceum
- Ai Mo Innovation Sea Change
- Ai Mo Innovation Soft Cottage

AI MO LEGAL CONSULTANTS
EXPERT LEGAL ADVISORY SERVICES
STANDARD ATTORNEY SERVICES AND FEES

At AI MO Legal Consultants, we offer a wealth of experience in providing top-tier legal advisory services. Our commitment to excellence is reflected in the transparency of our fee structure, ensuring fair and precise billing for the legal services we provide.

Standard Attorney Services and Rates

Each of our attorney services is individually tailored to meet the specific needs and requirements of your case. Our fee rates reflect the professional discretion of our experienced US licensed lawyers, who are dedicated to representing your best interests. Our rates are determined based on the scope and complexity of the legal services and work essential for each unique case.

- **Initial Attorney Consultation Rates**
 - Initial Attorney Consultation, up to 40 minutes (preliminary): USD \$150.00

Payment Methods: AI MO Legal Consultants accommodates various payment methods for your convenience. We accept bank wire transfers, electronic check deposits, and all major credit cards.

Our dedication to delivering exceptional legal counsel is matched by our commitment to clear and equitable billing practices. Should you require any further information or wish to engage our services, please do not hesitate to contact us.

Our Legal Fees for Handling Immigration Cases

Our fees are based on the work that the immigration case will generally require. In some cases, additional work may become applicable and may need to be performed upon advisement and agreement. A schedule of additional fees for U.S. immigration cases is listed further below on this page (these are legal fees and do not include any [USCIS filing fees](#) that may be applicable). For your convenience we offer payment plans and accept electronic checks and all major credit cards.

If, when and where applicable, if (after the initial consultation, you thereafter enter into an official Attorney Services Agreement (and hence, an applicable Attorney-Client Relationship) with us then, under such circumstances, you shall not have to pay the above-mentioned initial consultation fee(s) and, if you have already paid any/all such initial retainer amount(s) then the same will be applied and credited to your applicable client account.

U.S. Immigration Legal Fees Based on the Specific Type of Case / Required Filings

Our Costs:

Employment Residency Petition: Comprehensive Fee Structure

Below is a detailed breakdown of our fee structure for various services related to the Employment Residency Petition process:

1. LCA/PERM Petition - Petition for Alien Worker:

- **LCA (Labor Condition Application):** \$1,500.00
- **Initial I-140 Preparation:** \$5,000.00
- **Total Cost:** \$6,500.00

2. I-140 Petition Filing (For Alien Worker):

- **Filing Fee:** \$5,000.00

3. Employment-Based Adjustment of Status (I-485):

- **Processing Fee (Done in conjunction with LCA/PERM and I-140 Processing):** \$5,000.00

4. EB-1 Petition:

- **Petition Fee:** \$9,500.00

5. EB2 NIW Petition:

- **Petition Fee:** \$5,000.00

6. Response Preparation for RFE (Request for Evidence):

- **Starting Fee (Varies based on complexity):** \$1,000.00 onwards

7. Review of Petition (Prepared by Self Petitioners):

- **Review Fee:** \$1,000.00 onwards

8. Request for Reopening, Reconsideration, Appeal:

- **Before AAO, Courts (Fee negotiable, depending on the case details):** Fee is Case Specific and Negotiable

Notes:

- The fees mentioned are standard charges and are subject to vary depending on the specific needs and complexities of individual cases.
- For any further clarifications or additional information regarding the fee structure or the petition process, do not hesitate to reach out to us.

Prepared By:

Dr. Ammar Younas

info@aimoconsultants.com

<https://aimoconsultants.com/our-ceo/>