

# TALKING POINTS

## IMMIGRATION 101: EMPLOYMENT-BASED PERMANENT IMMIGRATION

### EMPLOYMENT-BASED IMMIGRATION

The Immigration and Nationality Act provides a yearly minimum of 140,000 employment-based immigrant visas which are divided into five preference categories. They may require a labor certification from the U.S. Department of Labor (DOL), and the filing of a petition with United States Citizenship and Immigration Services in the Department of Homeland Security (USCIS).

#### *Visa Categories<sup>1</sup>*

### EMPLOYMENT FIRST PREFERENCE (E1)

Priority Workers receive 28.6 percent of the yearly worldwide limit. All Priority Workers must be the beneficiaries of an approved Form I-140, Immigrant Petition for Foreign Worker, filed with USCIS. Within this preference there are three sub-groups:

1. Persons of extraordinary ability in the sciences, arts, education, business, or athletics. Applicants in this category must have extensive documentation showing sustained national or international acclaim and recognition in the field of expertise. Such applicants do not have to have a specific job offer so long as they are entering the U.S. to continue work in the field in which they have extraordinary ability. Such applicants can file their own petition with the USCIS, rather than through an employer;
2. Experience in teaching or research, who are recognized internationally. No labor certification is required for this classification, but the prospective employer must provide a job offer and file a petition with the USCIS; and
3. Certain executives and managers who have been employed at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the U.S. employer. The applicant must be coming to work in a managerial or executive capacity. No labor certification is required for this classification, but the prospective employer must provide a job offer and file a petition with the USCIS.

### EMPLOYMENT SECOND PREFERENCE (E2)

Professionals Holding Advanced Degrees or Persons of Exceptional Ability in the Arts, Sciences, or Business receive 28.6 percent of the yearly worldwide limit, plus any unused Employment First Preference visas. All Second Preference applicants must have a labor certification approved by the DOL, or Schedule A designation, or establish that they qualify for one of the shortage occupations in the Labor Market Information Pilot Program. A job offer is required and the U.S. employer must file a petition on behalf of the applicant. Aliens may apply for exemption from the job offer and labor certification if the exemption would be in the national interest, in which case the alien may file the petition, Form I-140, along with evidence of the national interest.

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<sup>1</sup> US Department of State website, [http://travel.state.gov/visa/immigrants/types/types\\_1323.html](http://travel.state.gov/visa/immigrants/types/types_1323.html)

### **EMPLOYMENT THIRD PREFERENCE (E3)**

Skilled Workers, Professionals Holding Baccalaureate Degrees and Other Workers receive 28.6 percent of the yearly worldwide limit, plus any unused Employment First and Second Preference visas. All Third Preference applicants require an approved I-140 petition filed by the prospective employer. All such workers require a labor certification, or Schedule A designation, or evidence that they qualify for one of the shortage occupations in the Labor Market Information Pilot Program.

### **EMPLOYMENT FOURTH PREFERENCE (E4)**

Special Immigrants receive 7.1 percent of the yearly worldwide limit. All such applicants must be the beneficiary of an approved I-360, Petition for Special Immigrant, except overseas employees of the U.S. Government who must use Form DS-1884. Certain spouses and children may accompany or follow-to-join the principal special immigrant.

### **EMPLOYMENT FIFTH PREFERENCE (E5)**

Employment Creation Investors receive 7.1 percent of the yearly worldwide limit. All applicants must file a Form I-526, Immigrant Petition by Alien Entrepreneur with USCIS. To qualify, an alien must invest between U.S. \$500,000 and \$1,000,000, depending on the employment rate in the geographical area, in a commercial enterprise in the United States which creates at least 10 new full-time jobs for U.S. citizens, permanent resident aliens, or other lawful immigrants, not including the investor and his or her family.