

I-140 Immigrant Petition for Alien Worker

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I-140 NATIONAL SOP: SECTION 1: MAILROOM MODULE

I-140 National
SOP
Introduction

Over time, the service centers have developed their own procedures for processing the various applications and petitions they receive. The goal of this Standard Operating Procedure (SOP) is to standardize operational policies and procedures used at the centers to process the I-140, Immigrant Petition for Alien Worker. To support this goal, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, Data Entry, U.S. CIS Review, File Room, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually as training and daily reference documents. Each module describes a stage in the processing of an I-140 petition. Below is a brief description of each module:

- **Mailroom-** The process by which the service center receives I-140 petitions, reviews them for acceptability, and assembles them for data entry.
- **Data Entry-** The process by where fees are receipted and case information is keyed into CLAIMS.
- **U.S. CIS Review-** The process by which the U.S. CIS verifies reasons for rejection cited by the contractor with the exception of fee and signature discrepancies.
- **File Room-** The process by which files are sorted and staged. Workload distribution is the process of staging, routing and distributing files.
- **Adjudications-** The process by which a petition is examined for determination of whether the petition is approvable or deniable.
- **Post-Adjudications-**The procedure to be followed after an officer makes a determination on an I-140 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-140 visa petition cases. This SOP is essentially just a guide for the consistent processing of Form I-140 visa petition cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

Section 1: Mailroom

I-140 Table of
Contents

The following is a table of contents, which serves as a guide for all six modules of the I-140 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center.

Introduction “Mailroom” is the process by which the service center receives incoming mail, which includes I-140 petitions. Here, all petitions must be stamped with the date that they arrive in the service center, and all remittances must be identified and endorsed. Cases are also initially reviewed for acceptability and assembled into Record of Proceeding (ROP) order in the mailroom.

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Part 1: Slit and Peek

Description Throughout processing in both the mailroom and data entry sections, submissions are maintained in groups, or batches. These submissions are stored as groups of like petitions (i.e., batches), indicating when U.S. CIS received the forms in the mailroom.

Requirement All submissions must be opened, sorted and batched according to the date of arrival and form type.

Standards Complete the standards below for all mail arriving in the mailroom.

No.	Standard
1.1	<p>From the submissions, identify the I-40 filings.</p> <p>Note: The following application(s) may ride (be kept together) with the I-140:</p> <ul style="list-style-type: none"> • Form I-824 • Concurrently filed I-485 (Additionally, other forms may ride with the I-485 in accordance with the I-485 SOP.)

1.2	<p>Endorse the remittance on its back with the U.S. CIS “For Deposit Only” stamp.</p> <p>Keep in mind the following:</p> <ul style="list-style-type: none"> • This may be completed after data entry using a computer slip printer. • Each remittance should be one of the following: personal check, bank/cashier’s check, treasury check or money order. • If the remittance is cash or the payee either is not U.S. CIS or was left blank, take it to your supervisor immediately. <table border="1" data-bbox="391 583 1211 825"> <thead> <tr> <th data-bbox="391 583 630 617">IF...</th> <th data-bbox="638 583 1211 617">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="391 617 630 688">The file will be moved for set up</td> <td data-bbox="638 617 1211 688">Return the remittances to the envelope.</td> </tr> <tr> <td data-bbox="391 688 630 825">The same person will be setting up the file</td> <td data-bbox="638 688 1211 825">Leave the remittance out of the envelope and continue processing.</td> </tr> </tbody> </table>	IF...	THEN...	The file will be moved for set up	Return the remittances to the envelope.	The same person will be setting up the file	Leave the remittance out of the envelope and continue processing.
IF...	THEN...						
The file will be moved for set up	Return the remittances to the envelope.						
The same person will be setting up the file	Leave the remittance out of the envelope and continue processing.						
1.3	<p>For a filing that will be moved for setup, bundle the filing with other I-140 filings, placing a batch sheet with your employee ID # and the total number of the form type on top of the batch. Then place the I-140 filing in a container labeled with the form type, received date, and number of forms included in the container.</p> <p>Reminder: Concurrently filed applications/petitions should be kept together.</p>						

Part 2: Assembly

Description Assembly is the process of reviewing the petition for completeness and assembling it into Record of Proceeding (ROP) order. It is suggested that the envelope be slit open on three sides to ensure that all of the contents are located and removed. According to local policy, a case may receive priority processing based on its classification, a customer-initiated request, or a Congressional request. Follow locally issued guidelines when processing these cases.

Requirement All of the applications/petitions submitted must be date- and time-stamped and placed in ROP order along with any supporting evidence. Contractors should review the case for eligibility criteria and the processing worksheet should be completed and initialed, as appropriate, during this review. Each filing should be reviewed against all required criteria. If after review, a petition would only be rejected for fee and/or signature, the file may be rejected without being sent to U.S. CIS Review. However, prior to rejection, the fee and/or signature deficiency must undergo a secondary review by an individual other than the contract employee originating the rejection. This secondary review may be performed by a supervisor, U.S. CIS employee, contractor personnel, or any individual skilled in checking for fee and signature deficiencies, including the individual preparing the rejection notice.

Standards Follow the standards below for assembly of the petition.

Keep in mind the following:

- All forms of original signature are acceptable, including the “X”, thumbprint, or an original facsimile signature stamp.
- A TYPEWRITTEN NAME IS NOT A SIGNATURE.
- An I-140 petition is **NOT** properly signed if the signature is not in Part 8 (*i.e.*, it is not properly attested to).
- A form will not be routed to U.S. CIS Review only for one or more of the following reasons: incorrect fee amount, unsigned or missing remittance.
- However, when routing a petition to U.S. CIS Review, make sure to forward the entire file, including any riding applications and family members’ petitions.

No.	Standard				
2.1	<p style="text-align: center;">Retain the envelope as a part of the file.</p> <p>Advice: If the mailing package is too large, retain the postmark, mailing and return address of the mailing package, as well as the certified or registered mail sticker.</p>				
2.2	<p>Legibly date-stamp the first page of each application/petition with the date the petition was received by the service center and the date-stamp number or employee ID number. Do not encroach upon the “For U.S. CIS Use Only” or “Do Not Write” section on the front page of the petition.</p>				
2.3	<p style="text-align: center;">Review the revision date on the lower, right-hand corner of the Form I-140, and the received date, to verify that the form version is acceptable.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th data-bbox="386 1682 786 1711">IF...</th> <th data-bbox="786 1682 1208 1711">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 1711 786 1814">The I-140 petition was received on or before 1/31/02</td> <td data-bbox="786 1711 1208 1814">Any version date from 12/2/91 to 12/04/01 is acceptable</td> </tr> </tbody> </table>	IF...	THEN...	The I-140 petition was received on or before 1/31/02	Any version date from 12/2/91 to 12/04/01 is acceptable
IF...	THEN...				
The I-140 petition was received on or before 1/31/02	Any version date from 12/2/91 to 12/04/01 is acceptable				

The I-140 petition was received after 1/31/02	Only a version date of 8/30/01 or 12/4/01 is acceptable. If an earlier version was submitted, annotate the processing worksheet in the "Other" block and reject the petition after completing the review of the ENTIRE petition.
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2.4	<p>Review Part 1 of the I-140 for the presence of a name (of a person or an organization) and an address.</p> <p>Note: An individual may file for himself or herself (self-petition) only under the "a," "d," or "i" categories listed in Part 2.</p> <table border="1" data-bbox="386 772 1208 1457"> <thead> <tr> <th data-bbox="386 772 799 810">IF...</th> <th data-bbox="799 772 1208 810">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 810 799 879">Part 1 contains a name and address</td> <td data-bbox="799 810 1208 879">Continue processing.</td> </tr> <tr> <td data-bbox="386 879 799 1050">Part 1 is left blank or is missing any information AND box "a," "d," or "i" in Part 2 <u>is</u> marked AND Part 3 contains the beneficiary's information</td> <td data-bbox="799 879 1208 1050">Continue processing.</td> </tr> <tr> <td data-bbox="386 1050 799 1253">Part 1 is left blank or is missing information AND neither box "a," nor "d" nor "i" has been checked in Part 2 AND Part 3 contains the beneficiary's information</td> <td data-bbox="799 1050 1208 1253">Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.</td> </tr> <tr> <td data-bbox="386 1253 799 1457">Part 1 is left blank or is missing information AND Part 3 <u>does not</u> contain the beneficiary's information</td> <td data-bbox="799 1253 1208 1457">Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.</td> </tr> </tbody> </table>	IF...	THEN...	Part 1 contains a name and address	Continue processing.	Part 1 is left blank or is missing any information AND box "a," "d," or "i" in Part 2 <u>is</u> marked AND Part 3 contains the beneficiary's information	Continue processing.	Part 1 is left blank or is missing information AND neither box "a," nor "d" nor "i" has been checked in Part 2 AND Part 3 contains the beneficiary's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.	Part 1 is left blank or is missing information AND Part 3 <u>does not</u> contain the beneficiary's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.
IF...	THEN...										
Part 1 contains a name and address	Continue processing.										
Part 1 is left blank or is missing any information AND box "a," "d," or "i" in Part 2 <u>is</u> marked AND Part 3 contains the beneficiary's information	Continue processing.										
Part 1 is left blank or is missing information AND neither box "a," nor "d" nor "i" has been checked in Part 2 AND Part 3 contains the beneficiary's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.										
Part 1 is left blank or is missing information AND Part 3 <u>does not</u> contain the beneficiary's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.										
2.5	<p>Review Part 2 of the I-140 to ensure that ONLY one box has been checked. If no box is checked or multiple boxes are checked, annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.</p>										

2.6	<p>Review Part 3 of the I-140 for the presence of a name.</p> <p>Note: An individual may file for himself or herself (self-petition) only under the "a," "d," or "i" categories listed in Part 2.</p> <table border="1" data-bbox="386 1835 1208 1871"> <thead> <tr> <th data-bbox="386 1835 799 1871">IF...</th> <th data-bbox="799 1835 1208 1871">THEN...</th> </tr> </thead> </table>	IF...	THEN...
IF...	THEN...		

Part 3 contains a name and address	Continue processing
Part 3 is left blank or is missing any information AND box "a," "d," or "i" in Part 2 <u>is</u> marked AND Part 1 contains the petitioner's information	Continue processing
Part 3 is left blank or is missing information AND neither box "a," nor "d" nor "i" has been checked in Part 2 AND Part 1 contains the petitioner's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.
Part 3 is left blank or is missing information AND Part 1 <u>does not</u> contain the petitioner's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.

2.7 **Review Part 6** of the I-140 for **jurisdiction** and annotate the processing worksheet if the petition is not in your center's jurisdiction.

Advice: The recommended approach for determining jurisdiction is to follow the instructions in the tables below.

A) Look at the address where the beneficiary will work in Part 6 of the petition.

IF...	THEN...
All work locations are in your center's jurisdiction (see jurisdiction table below)	Continue processing.
Locations in multiple centers' jurisdictions, including yours, are listed OR no locations are listed	Proceed to part B below.
No listed work locations are in your center's jurisdiction	Proceed to part C below.

B) Look at the address in Part 1 of the petition or Part 3 if Part 1 is blank.

IF...	THEN...
The address is in your center's jurisdiction (see jurisdiction tables below)	Continue processing.
The address is not in your center's jurisdiction	Proceed to part C below.

C) Check to see if the employer is on your center's sole jurisdiction list.

IF...	THEN...
If the employer is on your center's sole jurisdiction list	Continue processing.
If the employer is not on your center's sole jurisdiction list	Annotate the processing worksheet and then continue processing.

STANDARD JURISDICTION

State/Territory	Service Center
AZ, CA, Guam, HI, NV	CSC
AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, SD, UT, WI, WA, WY, OR	NSC
AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX	TSC
DC, CT, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VI, VT, WV	VSC

2.8	Review Part 8 of the I-140 to verify that the petitioner has properly signed the petition (<i>i.e.</i> , an original signature in the designated location on the petition). Annotate the processing worksheet if the signature is incorrect, missing, and/or signed by the wrong individual.								
2.9	<p>Review the remittance to ensure it meets the requirements specified in the Fee Remittance SOP. Check that the remittance amount is correct.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The fee amount is correct or the case is Fee Received Elsewhere (FRE)</td> <td>Continue processing.</td> </tr> <tr> <td>There is no remittance and the I-140 IS a duplicate filing*</td> <td>Route for U.S. CIS review.</td> </tr> <tr> <td>There is no remittance and the I-140 is NOT a duplicate filing OR there is a remittance and either the fee amount is incorrect or it does not meet other acceptability criteria</td> <td>Annotate the processing worksheet and continue processing.</td> </tr> </tbody> </table> <p>*Note: Duplicate I-140's are cases received without fee and appear to be rejects at first glance. A duplicate I-140 is identified by the presence of one of the following items:</p> <ul style="list-style-type: none"> - An annotation of the word "Duplicate" on the petition. - A Receipt or Approval Notice from a previous I-140. - Photocopies of a canceled check/money order. 	IF...	THEN...	The fee amount is correct or the case is Fee Received Elsewhere (FRE)	Continue processing.	There is no remittance and the I-140 IS a duplicate filing*	Route for U.S. CIS review.	There is no remittance and the I-140 is NOT a duplicate filing OR there is a remittance and either the fee amount is incorrect or it does not meet other acceptability criteria	Annotate the processing worksheet and continue processing.
IF...	THEN...								
The fee amount is correct or the case is Fee Received Elsewhere (FRE)	Continue processing.								
There is no remittance and the I-140 IS a duplicate filing*	Route for U.S. CIS review.								
There is no remittance and the I-140 is NOT a duplicate filing OR there is a remittance and either the fee amount is incorrect or it does not meet other acceptability criteria	Annotate the processing worksheet and continue processing.								

2.10	<p>If a G-28 was submitted, check whether or not it is acceptable.</p> <p>Keep in mind the following:</p> <ul style="list-style-type: none"> • A G-28 is acceptable only if all of the following are completed: <ul style="list-style-type: none"> ○ Block 2-Petitioner's name ○ Block 3-A box checked and representative's original signature (original facsimile stamp is acceptable) ○ Block 4- Name and original signature of person consenting (an original facsimile stamp is acceptable)
2.11	<p>If only one copy of a G-28 has been submitted and you have multiple filings where the petitioner is the same in each case, photocopy the G-28 for each petition and initial the copies with your employee number.</p>

2.12	<p>Establish the ROP by securely fastening the submitted documents into a blank standard receipt file folder according to the order below.</p> <p>Record/Left-Hand Side of File ROP (Top to Bottom)</p> <ol style="list-style-type: none"> 1. Fee Remittance 2. Acceptable G-28 (if present) 3. I-140 (with supplement) 4. Cover letter (if present) 5. Form ETA-750/Labor Certification (if present) 6. Other supporting documentation 7. Envelope or portion of the envelope showing address and postmark, face-up. <p>Non-Record/Right-Hand Side of File ROP (Top to Bottom)</p> <ol style="list-style-type: none"> 1. I-140 Processing Worksheet 2. Unacceptable G-28 (if present) <p>Keep in mind the following:</p> <ul style="list-style-type: none"> • You do not need to fasten the petition and supporting documents in a receipt file folder if the petition is to be rejected. • An I-140 concurrently filed with an I-485 will be assigned its own receipt number but will be kept in the A-file along with the I-485. Refer to the I-485 Concurrent Filing SOP for the correct ROP order.
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2.13	<p>If the I-140 has riding applications – the Form I-824 or a concurrently filed I-485 – review and assemble these applications in accordance with the appropriate SOP. Use a <i>separate folder</i> for each application with the exception that the I-485 should remain in the same folder. Securely fasten the additional folder(s) to the I-140 folder. If an application/ petition other than one of the above-listed form(s) is submitted with the I-140, route it to the appropriate processing team.</p> <p>Keep in mind the following:</p> <ul style="list-style-type: none"> I-485s concurrently filed with an I-140 should remain together. To determine the proper Record of Proceeding for I-140s concurrently filed with the I-485, see the I-485 SOP.
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Record of Proceeding Order

2.14	<p>Secure the remittance, if necessary. Staple remittances for concurrent applications according to the SOP for that form.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">The file will be moved (e.g., for data entry or U.S. CIS Review)</td> <td style="text-align: center;">Staple the remittance to the lower left corner of the top document on the left side of the ROP.</td> </tr> <tr> <td style="text-align: center;">The file will not be moved</td> <td style="text-align: center;">Do not staple the remittance.</td> </tr> </tbody> </table>	IF...	THEN...	The file will be moved (e.g., for data entry or U.S. CIS Review)	Staple the remittance to the lower left corner of the top document on the left side of the ROP.	The file will not be moved	Do not staple the remittance.				
IF...	THEN...										
The file will be moved (e.g., for data entry or U.S. CIS Review)	Staple the remittance to the lower left corner of the top document on the left side of the ROP.										
The file will not be moved	Do not staple the remittance.										
2.15	<p>Sort and group like cases as directed by current, locally issued guidelines. Label the batches with a batch sheet when you have:</p> <ul style="list-style-type: none"> A batch size of no more than 25; Completed all the work for a particular received date; or Reached the end of your shift. <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">IF the case is...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Only deficient for reason of incorrect fee amount, unsigned or missing remittance, and/or unsigned petition</td> <td style="text-align: center;">Refer it for secondary review, and then batch it with other such cases and route it for system rejection.</td> </tr> <tr> <td style="text-align: center;">Only deficient for reason of improper form revision date</td> <td style="text-align: center;">Batch it with other such cases and route it for rejection.</td> </tr> <tr> <td style="text-align: center;">Deficient for any other reason or includes a fee waiver request</td> <td style="text-align: center;">Batch it with other such cases and route it to U.S. CIS Review.</td> </tr> <tr> <td style="text-align: center;">Concurrently filed with an I-485</td> <td style="text-align: center;">Batch it with other such cases and route them for CIS check. See the I-485 SOP for further instructions.</td> </tr> </tbody> </table>	IF the case is...	THEN...	Only deficient for reason of incorrect fee amount, unsigned or missing remittance, and/or unsigned petition	Refer it for secondary review, and then batch it with other such cases and route it for system rejection.	Only deficient for reason of improper form revision date	Batch it with other such cases and route it for rejection.	Deficient for any other reason or includes a fee waiver request	Batch it with other such cases and route it to U.S. CIS Review.	Concurrently filed with an I-485	Batch it with other such cases and route them for CIS check. See the I-485 SOP for further instructions.
IF the case is...	THEN...										
Only deficient for reason of incorrect fee amount, unsigned or missing remittance, and/or unsigned petition	Refer it for secondary review, and then batch it with other such cases and route it for system rejection.										
Only deficient for reason of improper form revision date	Batch it with other such cases and route it for rejection.										
Deficient for any other reason or includes a fee waiver request	Batch it with other such cases and route it to U.S. CIS Review.										
Concurrently filed with an I-485	Batch it with other such cases and route them for CIS check. See the I-485 SOP for further instructions.										

Part 3: Processing Manual Rejects

- Description** A **manual reject** is a petition rejected for reasons other than incorrect fee amount, unsigned or missing remittance, or unsigned petition.
- Requirement** A manual reject must be generated for all rejects other than fee and/or signature deficiencies.
- Standards** Complete the standards below for generating manual reject notices.

No.	Standard
3.1	Using the reason indicated on the I-140 processing worksheet, prepare an appropriate manual reject notice.
3.2	Remove and discard the processing worksheet and any other internal U.S. CIS documentation (i.e. screen prints, etc.).
3.3	Follow outgoing mail procedures.

I-140 NATIONAL SOP: SECTION 2: DATA ENTRY MODULE

Section 2: Data Entry

I-140 Table of Contents The following is a table of contents, which serves as a guide for all six modules of the I-140 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

Introduction Data Entry is the process by which fees are receipted and case information is keyed into the **Computer Linked Application Information Management System (CLAIMS)**.

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Part 1: Processing Acceptable Cases

When to Perform This procedure is performed when the I-140 petition arrives at Data Entry from Assembly or U.S. CIS Review prior to entering the petitioner's information into CLAIMS 3.

Procedure for New Cases Use the “Enter” or arrow keys to move from field to field. **Unless otherwise specified, “key what you see.”** Thus, if a field is blank on the petition, leave it blank on the screen. Also, do not use punctuation, *except* for the ampersand (&) and forward slash (/).

Use the **Standard Data Entry and Abbreviations Guide** for all data entry. Abbreviate as much as possible; if there is an abbreviation for the word in the guide, use it instead of writing out the word.

Procedure for Processing Follow this procedure to review and process acceptable cases.

Acceptable Cases **Note:** A petition will not be routed to U.S. CIS Review for the following reasons: incorrect fee amount, unsigned or missing remittance, or unsigned petition.

Step

- 1.1
- 1.2

[View Figure 2.1](#)

1.3	<p>At the “Received Date” prompt, enter the mail received date from the date-stamp of the I-140 petition. The system will default to today’s date.</p> <p>Note: Ensure that the petition is date-stamped.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">IF...</th> <th style="text-align: center; padding: 5px;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">The case was received by the service center on a date prior to today</td> <td style="padding: 5px;">Type over the default date with the mailroom received date from the date-stamp on the I-140.</td> </tr> <tr> <td style="padding: 5px;">The case was received by another U.S. CIS office</td> <td style="padding: 5px;">Enter the date* the petition was received at that office.</td> </tr> <tr> <td style="padding: 5px;">The case was received today</td> <td style="padding: 5px;">Take no action.</td> </tr> <tr> <td style="padding: 5px;">The case was previously a system reject</td> <td style="padding: 5px;">Press “Alt” + “F9” and change the date to the new received date*.</td> </tr> </tbody> </table> <p style="text-align: center; padding: 5px;">*Note: Enter the date in mm/dd/yyyy format.</p> <p>Press “F4” to save.</p>	IF...	THEN...	The case was received by the service center on a date prior to today	Type over the default date with the mailroom received date from the date-stamp on the I-140.	The case was received by another U.S. CIS office	Enter the date* the petition was received at that office.	The case was received today	Take no action.	The case was previously a system reject	Press “Alt” + “F9” and change the date to the new received date*.
IF...	THEN...										
The case was received by the service center on a date prior to today	Type over the default date with the mailroom received date from the date-stamp on the I-140.										
The case was received by another U.S. CIS office	Enter the date* the petition was received at that office.										
The case was received today	Take no action.										
The case was previously a system reject	Press “Alt” + “F9” and change the date to the new received date*.										

1.4	<p>Review Part 1 of the I-140 for the presence of a name (of a person or an organization) and an address.</p> <p>Note: An individual may file for himself or herself (self-petition) only under the “a,” “d,” or “i” categories listed in Part 2.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">IF...</th> <th style="text-align: center; padding: 5px;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Part 1 contains a name and address</td> <td style="padding: 5px;">Proceed to step 1.5.</td> </tr> </tbody> </table>	IF...	THEN...	Part 1 contains a name and address	Proceed to step 1.5.
IF...	THEN...				
Part 1 contains a name and address	Proceed to step 1.5.				

Part 1 is left blank or is missing any information AND box "a," "d," or "i" in Part 2 <u>is</u> marked AND Part 3 contains the beneficiary's information	Proceed to step 1.5.
Part 1 is left blank or is missing information AND neither box "a," nor "d" nor "i" has been checked in Part 2 AND Part 3 contains the beneficiary's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.
Part 1 is left blank or is missing information AND Part 3 <u>does not</u> contain the beneficiary's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.

1.5	<p>In the "Information about person or organization filing this petition" section of the CLAIMS screen, enter the following data from Part 1 of the petition:</p> <ul style="list-style-type: none"> • NAME: Enter the name listed on the petition into the "name" fields. If no name is present, leave these fields blank. • COMPANY NAME: Enter the company name into the "firm" field. If two companies are listed, enter both names into the field. If the entire name does not fit, enter as many letters as the system permits. • ATTN: Enter any data provided on the "Attn:" line into the "Attn:" field. • COMPANY'S ADDRESS: Enter the company's address. If both a PO Box and a physical address are listed, enter the PO Box address. If both the petitioner's address and the representative's address are listed, enter the petitioner's address. Press "Enter," and the cursor will move to the zip code field. When you enter the zip code, the system will populate the city and state fields. Verify these fields. If the system populated city does not match the application, verify that you have typed the correct zip code. If the zip code is correct and the city still does not match, override the entry with the city listed on the petition. <ul style="list-style-type: none"> *Note: If the street address line is too long for the apartment or suite to fit, place said "APT" or "STE" ON THE LINE ABOVE the street address. • IRS TAX #: If exactly 9 digits are provided, enter the IRS tax number, otherwise leave it blank.
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1.6	Review Part 2 of the I-140 to ensure that only one box has been checked.
-----	---

	IF...	THEN...
	Only one box is checked	Proceed to step 1.7.
	If no box is checked or multiple boxes are checked	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.
1.7	In the "Petition type" section of the CLAIMS screen, enter the appropriate letter from Part 2 of the petition:	
	IF...	
	Box "a," "b," "c," "d," "e" or "g. Other worker" is checked	
	Box "i. NIW" is checked	
	Box "f," "g. Employee of U.S. business in Hong Kong," or "h. Soviet Scientist" is checked	

1.8	<p>Review Part 3 of the I-140 for the presence of a name.</p> <p>Note: An individual may file for himself or herself (self-petition) only under the "a," "d," or "i" categories listed in Part 2.</p>	
	IF...	THEN...
	Part 3 contains a name and address	Proceed to step 1.9.
	Part 3 is left blank or is missing any information AND box "a," "d," or "i" in Part 2 <u>is</u> marked AND Part 1 contains the petitioner's information	Proceed to step 1.9.
	Part 3 is left blank or is missing information AND neither box "a," nor "d" nor "i" has been checked in Part 2 AND Part 1 contains the petitioner's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.
	Part 3 is left blank or is missing information AND Part 1 <u>does not</u> contain the petitioner's information	Annotate the processing worksheet and forward to U.S. CIS Review for resolution after completing the review of the ENTIRE petition.

1.9	<p>In the “Information about the person you are filing for” section of the CLAIMS screen, enter the following data from Part 3 of the petition:</p> <ul style="list-style-type: none"> • Name (Enter the name listed on the petition into the “name” fields. If no name is listed, leave the fields blank.) • Address (Enter the address. Press “Enter” and the cursor will move to the zip code. Enter zip code and the system will populate the city and state fields. Override, if necessary.) • Date of Birth (DOB) • Country of Birth (COB) • Social Security Number (SSN) (if present) • Alien# (if present) • Date of arrival (if present) • I-94# (if present) • Current status (if present) • Expires on? (if present)
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1.10	<p>Fill in the prompt at the “G-28” field (see Figure 2.2 below):</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">IF there is...</th> <th style="text-align: center; padding: 5px;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">No G-28 or the G-28 is invalid</td> <td style="text-align: center; padding: 5px;">Ensure “N” is in the field, press the right arrow key and go to Step 1.11.</td> </tr> </tbody> </table>	IF there is...	THEN...	No G-28 or the G-28 is invalid	Ensure “N” is in the field, press the right arrow key and go to Step 1.11.
IF there is...	THEN...				
No G-28 or the G-28 is invalid	Ensure “N” is in the field, press the right arrow key and go to Step 1.11.				

	<p style="text-align: center;">A valid G-28</p> <p>Note: The G-28 is valid if the following are complete:</p> <ul style="list-style-type: none"> • Block 2- Petitioner's name and address • Block 3- One of the four boxes checked indicating type of representation and appropriate text entry: representative or attorney's original signature (original facsimile stamp is acceptable), address, printed name, and phone number • Block 4- Representative or attorney's name, name and original signature of person consenting (an original facsimile stamp is acceptable), and date 	<p>Type "Y." When the representative sub-screen appears, fill in the following information (make sure that you do not enter any data into the U.S. CIS attorney#, Atty state license#, and VOLAG# fields):</p> <ul style="list-style-type: none"> • Last name, first name, middle name (include titles, if provided) • Firm name/VOLAG (ONLY if different from attorney's name. If no firm name is listed, leave this field blank.) • Address. Enter the street address and any other physical address information provided (e.g., building name, suite number) in these fields. • Zip Code • Type of Appearance <ul style="list-style-type: none"> - If block 1 on the G-28 is checked, enter "A" - If block 2 is checked, enter "B" - If block 3 or 4 is checked, enter "C" <p>Press "F4" and, at the save changes prompt, press "Enter." Go to Step 1.11.</p>
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View Figure 2.2

1.11	Ensure that the remittance(s) meet(s) the requirements specified in the Fee Remittance SOP. The fee for the I-140 is \$115.							
<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">There is a remittance and it meets the Fee Remittance requirements,</td> <td style="text-align: center;">Go to Step 1.11A.</td> </tr> <tr> <td style="text-align: center;">The case is appropriately Fee Received Elsewhere (FRE),</td> <td style="text-align: center;">Go to Step 1.11B.</td> </tr> </tbody> </table>	IF...	THEN...	There is a remittance and it meets the Fee Remittance requirements,	Go to Step 1.11A.	The case is appropriately Fee Received Elsewhere (FRE),	Go to Step 1.11B.		
IF...	THEN...							
There is a remittance and it meets the Fee Remittance requirements,	Go to Step 1.11A.							
The case is appropriately Fee Received Elsewhere (FRE),	Go to Step 1.11B.							

There is no remittance and the case is not FRE,	Annotate the processing worksheet and forward for system rejection processing after completing the review of the ENTIRE petition. Go to step 1.12.
The remittance is not signed,	Annotate the processing worksheet and go to step 1.11A. (Route the case for system rejection after completing the review of the ENTIRE petition.)
The fee amount is incorrect,	Annotate the processing worksheet and go to step 1.11A. (Route the case for system rejection after completing the review of the ENTIRE petition.)
Any remittance does not meet other acceptability criteria, in accordance with the Fee Remittance SOP,	Annotate the processing worksheet and forward to U.S. CIS Review after completing the review of the ENTIRE petition. Go to step 1.12.

1.11 (cont.)	
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A.	REMITTANCE
	<p>When a remittance(s) is received, perform the following:</p> <ul style="list-style-type: none"> • Type "A" or press "Enter" in the "Fee Info" field. The system will bring up the remittance screen (see Figure 2.3 on the following page). • At the "Is the check signed?" prompt, enter "Y" if it is signed. Otherwise, enter "N." • At the "Type of remittance" field, press "Insert" twice and select one of the following from the dropdown menu or type the code into the field: <ul style="list-style-type: none"> BC – Bank Check, Cashier's Check, Draft CMO – Commercial Money Order IMO – International Money Order PC – Personal Check PMO – Postal Money Order TC – Treasury Check <p style="text-align: center;">*Note: Although the system has options for "Cash," "No fee collected" and "Fee in suspense," NEVER USE ANY OF THESE OPTIONS.</p> <ul style="list-style-type: none"> • Enter the Amount Received, unless the amount received was incorrect. In that case, enter \$1.00. • Type Remitter's Last Name. • Type Remitter's First Name. • Press "F4" to save. • Select "Yes" and press "Enter." • Press "Esc" and go to step 1.12.
B.	FEE RECEIPTED ELSEWHERE
	<p>When a case is fee receipted elsewhere do the following:</p> <ul style="list-style-type: none"> • In the "Fee Info" field, type "B" and press "Enter" (contact your supervisor for a Supervisor's Code). • Press "F4" to save and create a new receipt #. • Select "Yes" and press "Enter." • Press "Esc" and go to step 1.12.

[View Figure 2.3](#)

1.12	<p>Review Part 8 of the I-140: Verify that the petitioner has properly signed the petition (<i>i.e.</i>, an original signature in the designated location on the petition).</p>	
	IF...	THEN...
	The petition is properly signed	Type "Y" over the default "N" at the signature field, and go to Step 1.13.

	The petition is NOT properly signed (<i>i.e.</i> , it is not properly attested to)	Press "Enter" twice. Annotate the deficiency on the processing worksheet. Go to Step 1.13.
1.13	Make sure that there is an "N" in the "concurrent with" field.	
1.14	Press "F4" to save.	
	IF...	THEN...
	No deficiencies were noted during review	Go to Step 1.15.
	A deficiency was noted because the remittance was omitted, unsigned or for the wrong amount, or the petition was improperly signed	Follow the steps for a system reject ("Processing System Rejects," step 2.3).
	Deficiencies were noted	Go to Step 1.18.
1.15	CLAIMS will assign a receipt number and print labels. If you need to make changes, type "N" and enter changes as needed.	
1.16	Remove the remittance(s) from the top page of the ROP and write the following information on the upper-front portion of each: <ul style="list-style-type: none"> • Receipt Number • Date • Your Employee ID# 	
1.17	Place the fee in the lock-box.	

1.18	<p>The system-generated labels should be used as follows:</p> <ul style="list-style-type: none"> • Affix a barcode label in the receipt box on the original petition. Note: When affixing barcode labels, BE CAREFUL NOT TO COVER any U.S. CIS stamps or notations that may be in the receipt box area. • Affix a machine-readable barcode label to the back of the file jacket tab. • Affix a human readable label to the front of the file jacket tab. • Staple remaining labels appropriately, making sure that you DO NOT staple through barcode labels. • Affix an I-140 SWIP FEE or W sticker two inches below the barcode on the back of the file tab. 	
1.19	Route the file appropriately:	
	IF...	THEN...
	Deficiencies were noted during review other than those for system rejection	Route the file to U.S. CIS Review.
	No deficiencies were noted	Route to the File Room* for file maintenance and workload distribution.

I-LINK

***Note:** The *File Room* function is referred to by different names depending on the service center:

- CSC- Just in Time 1/ Just in Time 2 (JIT 1/ JIT 2)
- VSC- File Coordination Unit (FCU)
- TSC- Work Distribution Unit (WDU) and File Maintenance Unit (FMU)
- NSC- Work Distribution Unit (WDU)

Part 2: Processing System Rejects

When to Perform Petitions are forwarded from Mailroom or continued on from initial data entry for system reject processing in Data Entry.

Description A **system reject** is a petition rejected for incorrect fee, unsigned or missing remittance, or unsigned or improperly signed petition. These rejections are processed in CLAIMS.

Procedure for Processing System Rejects Follow this procedure to process system rejects:

Step

2.1

2.2

2.3

2.4

2.5

2.6

- Retrieve the reject letter generated by CLAIMS and verify that it is correct.
- Draw a line through the existing date-stamp and fee amount on the petition and write an "R" on the barcode label on the face of the petition.
- Cancel the bank endorsement stamp on the remittance.
- Remove and discard the processing worksheet.
- Staple the reject letter to the front of the petition.

2.7

2.8

Part 3: Processing Manual Rejects

Description A **manual reject** is a petition rejected for reasons other than incorrect fee amount, unsigned or missing remittance, or unsigned petition.

Procedure for Processing Manual Reject Notices To process a reject notice for reasons other than fee and/or signature, complete the following steps:

Step	Action: Contractor
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3.1	Using the reason indicated on the I-140 processing worksheet, prepare an appropriate manual reject notice.
3.2	Follow outgoing mail procedures.

I-140 NATIONAL SOP: SECTION 3: U.S. CIS REVIEW MODULE

Section 3: U.S. CIS Review

I-140 Table of Contents The following is a table of contents, which serves as a guide for all six modules of the I-140 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center.

Introduction After the Mailroom or Data Entry has reviewed the I-140 acceptability, U.S. CIS must verify the reasons for rejection cited by the Mailroom or Data Entry personnel for preparation of the reject notice, with the exception of reasons involving an incorrect revision date; an improperly signed petition; or a remittance that is missing, unsigned, or for the wrong amount. This stage in the process is referred to as U.S. CIS Review.

U.S. CIS Personnel The selection of the U.S. CIS personnel that will be assigned to U.S. CIS Review will be the responsibility of Management at each service center. Keep in mind that U.S. CIS Review does not necessarily have to be completed by an officer.

Section 3: Table of Contents	Page
Part 1a: Reviewing for Reject Criteria -----	3-4
Part 1b: Reviewing for Fee Remittance -----	3-6
Part 1c: Reviewing for Basis of Eligibility -----	3-7
Part 1d: Reviewing for Jurisdiction -----	3-9

Part 1a: Reviewing for Reject Criteria

When to Perform After the Mailroom or Data Entry has reviewed the I-140 acceptability, U.S. CIS must verify the reasons for rejection cited by the Mailroom or Data Entry personnel for preparation of the reject notice, with the exception of reasons involving an incorrect revision date; an improperly signed petition; or a remittance that is missing, unsigned, or for the wrong amount.

Procedure To review the petition for reject criteria, perform the following steps:

Step	Action: U.S. CIS							
1a.1	Identify the reason(s) for rejection annotated by the Mailroom or Data Entry personnel on the processing worksheet.							
1a.2	<p>Verify that the reason(s) for rejection is valid using the corresponding instructions below. Instructions for reject criteria are posted in the following order:</p> <ol style="list-style-type: none"> 1. Fee Remittance Acceptability 2. Completeness of Petition (i.e., presence of name, address, jurisdiction, classification, signature, etc.) <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The Mailroom or Data Entry personnel correctly identified a reject criterion</td> <td>Initial the notation on the processing worksheet, and route the file for production of a reject notice.</td> </tr> <tr> <td>The Mailroom or Data Entry personnel incorrectly identified a reject criterion, and the case is acceptable</td> <td>Modify, initial, and date the notation on the processing worksheet. Return the file to continue processing.</td> </tr> </tbody> </table>		IF...	THEN...	The Mailroom or Data Entry personnel correctly identified a reject criterion	Initial the notation on the processing worksheet, and route the file for production of a reject notice.	The Mailroom or Data Entry personnel incorrectly identified a reject criterion, and the case is acceptable	Modify, initial, and date the notation on the processing worksheet. Return the file to continue processing.
IF...	THEN...							
The Mailroom or Data Entry personnel correctly identified a reject criterion	Initial the notation on the processing worksheet, and route the file for production of a reject notice.							
The Mailroom or Data Entry personnel incorrectly identified a reject criterion, and the case is acceptable	Modify, initial, and date the notation on the processing worksheet. Return the file to continue processing.							

Step	Action: U.S. CIS					
1a.2 (cont.)	<table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The Mailroom or Data Entry personnel incorrectly identified a reject criterion, but other reject criteria are correctly identified</td> <td>Modify, initial, and date the notation on the processing worksheet, and route the file for production of a reject notice.</td> </tr> </tbody> </table>	IF...	THEN...	The Mailroom or Data Entry personnel incorrectly identified a reject criterion, but other reject criteria are correctly identified	Modify, initial, and date the notation on the processing worksheet, and route the file for production of a reject notice.	
IF...	THEN...					
The Mailroom or Data Entry personnel incorrectly identified a reject criterion, but other reject criteria are correctly identified	Modify, initial, and date the notation on the processing worksheet, and route the file for production of a reject notice.					

Reminders

- Check to see if the case requires priority processing or special handling.
- Cases riding together should remain together.
- Multiple filings for the same alien should remain together.

Part 1b: Reviewing for Fee Remittance

Review for Correct Fee

In Reviewing for Fee Remittance, you will be checking any remittance rejected for reasons other than because the remittance was missing, unsigned or for the wrong amount.

Procedure

If the Mailroom or Data Entry personnel have identified the petition as having the incorrect fee, U.S. CIS must review the petition to determine whether it should be rejected. Please refer to your Fee Remittance SOP for guidelines.

Step	Action: U.S. CIS												
1b.1	<p>Ensure that all applicable fees are present, amount is correct and remittance meets acceptability criteria. The fee for the I-140 is \$135.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>A request to waive the fee is submitted</td> <td>Annotate the processing worksheet and refer to local fee waiver procedures.</td> </tr> <tr> <td>Only one payment is submitted for the I-140 and all concurrent files, and the fee payment is incorrect</td> <td>Reject.</td> </tr> <tr> <td>The fee for the I-140 is correct and the fee for the concurrent filings is incorrect AND separate checks were submitted</td> <td>Accept the I-140 and reject the concurrent filings.</td> </tr> <tr> <td>The fee for the I-140 is incorrect and the fee for the concurrent filings is correct AND separate checks were submitted</td> <td>Reject the I-140 and all concurrent filings.</td> </tr> <tr> <td>The remittance does not otherwise meet acceptability criteria as established by the Fee Remittance SOP</td> <td>Reject.</td> </tr> </tbody> </table>	IF...	THEN...	A request to waive the fee is submitted	Annotate the processing worksheet and refer to local fee waiver procedures.	Only one payment is submitted for the I-140 and all concurrent files, and the fee payment is incorrect	Reject.	The fee for the I-140 is correct and the fee for the concurrent filings is incorrect AND separate checks were submitted	Accept the I-140 and reject the concurrent filings.	The fee for the I-140 is incorrect and the fee for the concurrent filings is correct AND separate checks were submitted	Reject the I-140 and all concurrent filings.	The remittance does not otherwise meet acceptability criteria as established by the Fee Remittance SOP	Reject.
IF...	THEN...												
A request to waive the fee is submitted	Annotate the processing worksheet and refer to local fee waiver procedures.												
Only one payment is submitted for the I-140 and all concurrent files, and the fee payment is incorrect	Reject.												
The fee for the I-140 is correct and the fee for the concurrent filings is incorrect AND separate checks were submitted	Accept the I-140 and reject the concurrent filings.												
The fee for the I-140 is incorrect and the fee for the concurrent filings is correct AND separate checks were submitted	Reject the I-140 and all concurrent filings.												
The remittance does not otherwise meet acceptability criteria as established by the Fee Remittance SOP	Reject.												

Part 1c: Reviewing for Basis of Eligibility

Review for
Basis for
Eligibility

In order to be eligible to request immigrant classification, a petitioner must show that the intended employment would qualify an alien for the employment-based classification.

Procedure

Determine the basis for eligibility by completing the following steps:

Step	Action: U.S. CIS
------	------------------

1c.1	<p>Check the petitioner's basis for filing. Verify that the petitioner has checked the appropriate box in Part 2 of the I-140. A petition is not valid unless the petitioner designates in Part 2 of the I-140 one of the following appropriate classifications:</p> <ul style="list-style-type: none"> • Alien of extraordinary ability • Outstanding professor or researcher • Multi-national executive or manager • Member of profession with an advanced degree or exceptional ability • Skilled worker or professional • Other worker • National Interest Waiver <p>Note: The following categories are inappropriate: "Employee of U.S. business in Hong Kong" and "Soviet Scientist."</p>
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1c.1 (cont.)	<table border="1"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td>An appropriate box is checked</td> <td>Annotate, initial, and date the processing worksheet.</td> </tr> <tr> <td>An inappropriate box is checked, multiple boxes are checked or no box is checked, and the classification CAN be identified from supporting documents</td> <td>Mark the appropriate box in red ink and initial it. Annotate and initial the processing worksheet.</td> </tr> <tr> <td>An inappropriate box is checked, multiple boxes are checked or no box is checked, and the classification CANNOT be identified from supporting documents</td> <td>Annotate and initial the processing worksheet and forward for rejection after review of all reject criteria.</td> </tr> </tbody> </table>	IF...	THEN...	An appropriate box is checked	Annotate, initial, and date the processing worksheet.	An inappropriate box is checked, multiple boxes are checked or no box is checked, and the classification CAN be identified from supporting documents	Mark the appropriate box in red ink and initial it. Annotate and initial the processing worksheet.	An inappropriate box is checked, multiple boxes are checked or no box is checked, and the classification CANNOT be identified from supporting documents	Annotate and initial the processing worksheet and forward for rejection after review of all reject criteria.
IF...	THEN...								
An appropriate box is checked	Annotate, initial, and date the processing worksheet.								
An inappropriate box is checked, multiple boxes are checked or no box is checked, and the classification CAN be identified from supporting documents	Mark the appropriate box in red ink and initial it. Annotate and initial the processing worksheet.								
An inappropriate box is checked, multiple boxes are checked or no box is checked, and the classification CANNOT be identified from supporting documents	Annotate and initial the processing worksheet and forward for rejection after review of all reject criteria.								

LAW AND CLASSIFICATION CHART

<i>Employment</i>			
Type of Petition	Section of Law	Classification	Preference
I-140	203(b)(1)(A), 203(b)(1)(B), or 203(b)(1)(C)	E11, E12, E13	1 st
	203(b)(2)	E21	2 nd
	203(b)(3)(A)(i), 203(b)(3)(A)(ii)	E31, E32	3 rd
	203(b)(3)(A)(iii)	EW3	Other workers

Part 1d: Reviewing for Jurisdiction

Review for Jurisdiction Jurisdiction is the area over which a service center has the authority to adjudicate a case. If the service center does not have jurisdiction over a particular I-140, the service center cannot adjudicate it. The following criteria will be used to check for jurisdiction.

Procedure To check for jurisdiction, complete the following steps:

Step	Action: U.S. CIS								
1d.1	<p>Review Part 6 of the I-140 petition for jurisdiction.</p> <p>A) Look at the address where the beneficiary will work in Part 6 of the petition.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>All work locations are in your center's jurisdiction (see jurisdiction table below)</td> <td>Accept the petition.</td> </tr> <tr> <td>Locations in multiple centers' jurisdictions, including yours, are listed OR no locations are listed</td> <td>Proceed to part B below.</td> </tr> <tr> <td>No listed work locations are in your center's jurisdiction</td> <td>Proceed to part C below.</td> </tr> </tbody> </table>	IF...	THEN...	All work locations are in your center's jurisdiction (see jurisdiction table below)	Accept the petition.	Locations in multiple centers' jurisdictions, including yours, are listed OR no locations are listed	Proceed to part B below.	No listed work locations are in your center's jurisdiction	Proceed to part C below.
IF...	THEN...								
All work locations are in your center's jurisdiction (see jurisdiction table below)	Accept the petition.								
Locations in multiple centers' jurisdictions, including yours, are listed OR no locations are listed	Proceed to part B below.								
No listed work locations are in your center's jurisdiction	Proceed to part C below.								

1d.1 (cont.)	<p>B) Look at the address in Part 1 of the petition or Part 3 if Part 1 is blank.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The address is in your center's jurisdiction (see jurisdiction tables below)</td> <td>Accept the petition.</td> </tr> <tr> <td>The address is not in your center's jurisdiction</td> <td>Proceed to Part C below.</td> </tr> </tbody> </table>	IF...	THEN...	The address is in your center's jurisdiction (see jurisdiction tables below)	Accept the petition.	The address is not in your center's jurisdiction	Proceed to Part C below.
IF...	THEN...						
The address is in your center's jurisdiction (see jurisdiction tables below)	Accept the petition.						
The address is not in your center's jurisdiction	Proceed to Part C below.						
	<p>C) Check to see if the employer is on your center's sole jurisdiction list.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>If the employer is on your center's sole jurisdiction list</td> <td>Accept the petition.</td> </tr> <tr> <td>If the employer is not on your center's sole jurisdiction list</td> <td>Annotate the processing worksheet and reject the petition.</td> </tr> </tbody> </table>	IF...	THEN...	If the employer is on your center's sole jurisdiction list	Accept the petition.	If the employer is not on your center's sole jurisdiction list	Annotate the processing worksheet and reject the petition.
IF...	THEN...						
If the employer is on your center's sole jurisdiction list	Accept the petition.						
If the employer is not on your center's sole jurisdiction list	Annotate the processing worksheet and reject the petition.						

Jurisdiction Table Use the chart below to determine the states under jurisdiction of each Service Center.

Service Center	State
CSC	AZ, CA, Guam, HI, NV
NSC	AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, OR, SD, UT, WA, WI, WY
VSC	CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VT, WV, VI
TSC	AR, AL, FL, GA, KY, LA, MS, NM, NC, SC, OK, TN, TX

I-140 NATIONAL SOP: SECTION 4: FILE ROOM MODULE

Section 4: File Room

I-140 Table of Contents The following is a table of contents, which serves as a guide for all six modules of the I-140 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center.

Introduction Two processes may take place in the File Room*. **File maintenance** is the process by which files are staged and sorted by date received and classification. **Workload distribution** is the process of staging, routing, updating, and distributing files. During workload distribution, files may be staged one of four ways:

- Ready for adjudication;
- Awaiting a response from a Request for Evidence;
- Awaiting a response from an Intent to Deny or an Intent to Revoke; and
- Denied or revoked petition awaiting a possible notice of appeal.

***Note:** The *File Room* function is referred to by different names depending on the service center:

- CSC- Just in Time (JIT 1/ JIT 2)
- VSC- File Coordination Unit (FCU)
- TSC- Work Distribution Unit (WDU) and File Maintenance Unit (FMU)
- NSC- Work Distribution Unit (WDU)

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Part 1: File Maintenance

Description Files received in the File Room are routed for file maintenance to be staged and sorted.

Requirement Files must be sorted by date received and I-140 classification.

Standards for File Maintenance The standard for file maintenance is as follows:

No.	Standard
1.1	Receive and RAFACS cases to the File Room.
1.2	Sort cases by date received.
1.3	Sort cases by I-140 classification.

Part 2: Workload Distribution

Description Files are staged by received date and I-140 classification and updated in RAFACS to the designated responsible party location.

U.S. CIS supervisors regularly advise both the adjudicators and CPAU staff of current operating priorities. When U.S. CIS personnel make a request for work, File Room personnel fill and distribute the request based upon priorities and the amount of work requested.

Requirement Files must go through the process of workload distribution, which involves staging, updating, routing and distributing files. Additionally, any time a file is moved, it MUST be updated in RAFACS to the designated responsible party code.

Standards To stage and distribute files, complete the following standards:

No.	Standard
2.1	Stage files by received date and I-140 classification. Update the file in RAFACS to the designated responsible party location.
2.2	Once you receive work requests, fill them and update RAFACS with the appropriate responsible party code.
2.3	Route the files to the requester.

Part 3: Staging and Distributing Requests for Evidence (RFEs)

Description	File Room personnel stage files awaiting a response for a Request for Evidence (RFE). These files are shelved under a separate RAFACS code. A petitioner has 87 days to respond to a RFE. When evidence is received, file room staff shall update CLAIMS, retrieve files, connect responses with the file, and route the file to the adjudicator who initiated the RFE. If the petitioner does not respond within 87 days, the application is considered "abandoned" and is routed for abandonment processing.
Requirement	File room personnel must stage files for 87 days, update CLAIMS if necessary, retrieve files, and route files to requesters.
Standards for Staging and Distributing Requests for Evidence	To stage and distribute requests for evidence, complete the following standards.

No.	Standard						
3.1	Stage files for which a RFE has been issued on the RFE hold shelf by call-up date. The call-up date is 87 days from the date the RFE is sent to the petitioner.						
3.2	<p style="text-align: center;">Determine the next appropriate action.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">IF a response is...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Received</td> <td>Update the response in CLAIMS, match it to the file and route it to the appropriate adjudicator.</td> </tr> <tr> <td style="text-align: center;">Not received within 87 days</td> <td> Pull the file and route it for abandonment processing. Advice: Before pulling the file, verify all mail for that call-up date has been processed and that file connections for responses to RFEs are current." </td> </tr> </tbody> </table>	IF a response is...	THEN...	Received	Update the response in CLAIMS, match it to the file and route it to the appropriate adjudicator.	Not received within 87 days	Pull the file and route it for abandonment processing. Advice: Before pulling the file, verify all mail for that call-up date has been processed and that file connections for responses to RFEs are current."
IF a response is...	THEN...						
Received	Update the response in CLAIMS, match it to the file and route it to the appropriate adjudicator.						
Not received within 87 days	Pull the file and route it for abandonment processing. Advice: Before pulling the file, verify all mail for that call-up date has been processed and that file connections for responses to RFEs are current."						

Part 4: Staging and Distributing Intentions to Deny (ITD) or Intentions to Revoke (ITR)

Description	File room personnel may stage files awaiting response to an Intent to Deny (ITD) or Intent to Revoke (ITR). These files are shelved under a separate RAFACS code. A petitioner has 33 days to respond to an ITD or ITR. After the petitioner responds to the ITD or ITR, file room staff shall file-connect the evidence with the appropriate case and forward it to the adjudicator who originated the ITD or ITR. If the petitioner does not respond within 33 days, the petition is deniable and is routed to the adjudicator who originated the ITD or ITR.
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Requirement Files must be staged for 33 days and then routed to the appropriate adjudicator.

Standards To stage and distribute intents to deny or intents to revoke, complete the following standards.

No.	Standard						
4.1	Stage files for which an Intent to Deny or Intent to Revoke has been issued on the ITD or ITR hold shelf, as appropriate. Stage these files for 33 days.						
4.2	<p>Determine the next appropriate action.</p> <table border="1"> <thead> <tr> <th>IF a response is...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>Received</td> <td>Update the response in CLAIMS, match it to the file and route it to the appropriate adjudicator.</td> </tr> <tr> <td>Not received within 33 days</td> <td> <p>Pull the file and route it to the appropriate adjudicator.</p> <p>Advice: Before pulling the file, verify all mail for that call-up date has been processed.</p> </td> </tr> </tbody> </table>	IF a response is...	THEN...	Received	Update the response in CLAIMS, match it to the file and route it to the appropriate adjudicator.	Not received within 33 days	<p>Pull the file and route it to the appropriate adjudicator.</p> <p>Advice: Before pulling the file, verify all mail for that call-up date has been processed.</p>
IF a response is...	THEN...						
Received	Update the response in CLAIMS, match it to the file and route it to the appropriate adjudicator.						
Not received within 33 days	<p>Pull the file and route it to the appropriate adjudicator.</p> <p>Advice: Before pulling the file, verify all mail for that call-up date has been processed.</p>						

Part 5: Staging and Distributing Denied Petitions

Description Denied petitions are held for 33 days until an appeal has either been sent or not received. Pending the result, the file is routed to the appropriate adjudicator.

Requirement File room personnel must stage denied cases for a period of 33 days, allowing for a notice of appeal.

Standards To stage and distribute denied petitions, complete the following standards.

No.	Standards						
5.1	Stage the denied petitioner file for a period of 33 days.						
5.2	<p>Determine the next appropriate action.</p> <table border="1"> <thead> <tr> <th>IF an Appeal is...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>Received</td> <td>Match the appeal, consolidate it into the denied case file and route it to the appropriate adjudicator.</td> </tr> <tr> <td>NOT received within 33 days</td> <td> <p>Pull the file and route it to the appropriate file room location.</p> <p>Advice: Before pulling the file, verify all mail for that call-up date has been processed.</p> </td> </tr> </tbody> </table>	IF an Appeal is...	THEN...	Received	Match the appeal, consolidate it into the denied case file and route it to the appropriate adjudicator.	NOT received within 33 days	<p>Pull the file and route it to the appropriate file room location.</p> <p>Advice: Before pulling the file, verify all mail for that call-up date has been processed.</p>
IF an Appeal is...	THEN...						
Received	Match the appeal, consolidate it into the denied case file and route it to the appropriate adjudicator.						
NOT received within 33 days	<p>Pull the file and route it to the appropriate file room location.</p> <p>Advice: Before pulling the file, verify all mail for that call-up date has been processed.</p>						

	<p>NOT received in 33 days and the file contains a pending I-485</p>	<p>Pull the A-file and route it to the appropriate U.S. CIS unit for the adjudication of the I-485.</p> <p>Advice: Before pulling the file, verify all mail for that call-up date has been processed.</p>
--	--	--

Part 6: Staging and Distributing Revoked Petitions

Description	File room personnel stage revoked cases for a period of 18 days, allowing for a notice of appeal.
Requirement	The revoked file must be held for 18 days before routing it to the appropriate adjudicator.
Standards	To stage and distribute revoked petitions, complete the following standards.

No.	Standards								
6.1	Stage the revoked petitioner file for a period of 18 days.								
6.2	Determine the next appropriate action. <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="width: 40%;">IF an Appeal is...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>Received</td> <td>Match the appeal, consolidate it into the revoked case file and route it to the appropriate adjudicator.</td> </tr> <tr> <td>NOT received within 18 days</td> <td> Pull the file and route it to the appropriate file room location. Advice: Before pulling the file, verify all mail for that call-up date has been processed. </td> </tr> <tr> <td>NOT received in 18 days and the file contains a pending I-485</td> <td> Pull the A-file and route it to the appropriate U.S. CIS unit for the adjudication of the I-485. Advice: Before pulling the file, verify all mail for that call-up date has been processed. </td> </tr> </tbody> </table>	IF an Appeal is...	THEN...	Received	Match the appeal, consolidate it into the revoked case file and route it to the appropriate adjudicator.	NOT received within 18 days	Pull the file and route it to the appropriate file room location. Advice: Before pulling the file, verify all mail for that call-up date has been processed.	NOT received in 18 days and the file contains a pending I-485	Pull the A-file and route it to the appropriate U.S. CIS unit for the adjudication of the I-485. Advice: Before pulling the file, verify all mail for that call-up date has been processed.
IF an Appeal is...	THEN...								
Received	Match the appeal, consolidate it into the revoked case file and route it to the appropriate adjudicator.								
NOT received within 18 days	Pull the file and route it to the appropriate file room location. Advice: Before pulling the file, verify all mail for that call-up date has been processed.								
NOT received in 18 days and the file contains a pending I-485	Pull the A-file and route it to the appropriate U.S. CIS unit for the adjudication of the I-485. Advice: Before pulling the file, verify all mail for that call-up date has been processed.								

I-140 NATIONAL SOP: SECTION 5: ADJUDICATIONS MODULE

Section 5: Adjudications

I-140 Table of Contents The following is a table of contents, which serves as a guide for all six modules of the I-140 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center.

Introduction “Adjudications” is the process by which an I-140 petition is examined for determination of whether it is approvable or deniable.

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Part 1: Overview

References	<p>Law: Section 203(b)(1), (2), &(3) of the Immigration and Nationality Act</p> <p>Regulations: Title 8, Code of Federal Regulations, Part 204.5, Part 103, Part 205</p>
Definition of the I-140	<p>The Form I-140, Immigrant Petition for Alien Worker, is a petition filed by an employer for a prospective permanent alien employee. In some instances, an alien (or a designated representative) may file this petition on his/her own behalf. If approved, the I-140 is the first step toward the alien's becoming a Permanent Resident in the United States, giving him/her the right to live and work in the United States permanently.</p>
I-140 Employment-Based Preference Classifications	<p>The Immigration and Nationality Act (Act) establishes various immigrant visa classifications, and sets the number of immigrants (other than immediate relatives of citizens and some other special immigrants) who may immigrate under each classification during each fiscal year. One broad category, established under section 203(b) of the Act, is for immigration based on employment in the United States. The U.S. CIS Form I-140 is the form a prospective employer files to classify an alien in one of the employment-based immigrant visa preference categories.</p>
Purpose of Employment-based Immigration	<p>The purpose of employment-based immigration is to enable such firms to obtain the workers it needs when they would otherwise be unavailable in the U.S. The law classifies such workers into categories, based on the general job requirements, and the perceived benefit to American society. The employer must demonstrate that the job requirements fit into one of these classifications, that U.S. workers are not available, and that the particular alien worker meets the job requirements. A certification process has been mandated, and established, by law, to ensure that the hiring of such alien workers would not undercut the wages and working conditions of U.S. workers similarly employed. Obtaining alien workers is not meant to be an easy process, but one that is available to the U.S. firm when similarly qualified U.S. workers are not locally available.</p>
The First Employment-based Preference	<p>There are three subcategories:</p> <p>E11 Aliens with extraordinary ability in the sciences, arts, education, business, or athletics</p> <p>E12 Outstanding professors and researchers</p> <p>E13 Multinational executives and managers</p>
The Second Employment-based Preference	<p>E21 This classification includes (a) aliens who are members of the professions with an advanced degree (or the equivalent) and (b) aliens with exceptional ability (<i>i.e.</i>, something less than "extraordinary" ability) in the sciences, arts, or business.</p>

I-LINK

The Third Employment-based Preference

There are three subcategories:

E31 Skilled workers (position must require at least 2 years of training or experience)

E32 Professional workers (position must require that members of the professions hold a U.S. bachelor's degrees, or the foreign equivalent degree)

EW3 Other workers (position requiring less than 2 years of training or experience)

Priority Dates

Every approved immigrant petition has a priority date. The priority date is the date used to determine the availability of an immigrant visa for the beneficiary of an immigrant petition. Visas are issued in the various classifications based upon this priority date. Priority dates are established for each classification as described in Figure 5.1 below.

Figure 5.1-Determining Priority Dates

Classification:	Priority Date:
E11, E12, and E13	Filing date for I-140
E21, with national interest waiver	Filing date for I-140
Schedule A, Group I or II Relating E21, E31, E32, EW3	Filing date for I-140
Individual labor certification required Other E21, E31, E32, EW3	Earliest date that DOL accepted ETA-750

NSF (Non-Sufficient Funded) Checks

For those petitions in which the filing date determines the priority date and the check was returned for non-sufficient funds, the priority date must be adjusted to the date an acceptable remittance was received.

Note: Draw an "X" through the date stamp and notate when the bounced check was paid in order to document the correct priority date.

Retention of Priority Date

The beneficiary of a petition subsequently approved under Section 203(b)(1)(2) or (3), of the Act retains the earliest priority date of any previously approved I-140 petition. [8 CFR 204.5(e)]

The beneficiary will not retain the priority date if the previously approved petition has been:

- Denied, or
- Revoked under Section 204(e) or 205 of the Act.

Labor Certification Substitutions

On occasion, employers will request that a new alien be substituted for the alien listed on a certified ETA-750. The priority date for a petition that is supported by a labor certification substitution is the earliest date the certification was accepted for processing by the DOL. Labor certification substitutions are allowed ONLY if that certified ETA-750 has not been used by a prior beneficiary to obtain an immigrant visa.

Priority Dates
for 3rd or 6th
Preference
Petitions Filed
before
10/01/91

Under section 161(c)(4) of the Immigration Act of 1990, as amended, any approved petition that was filed before 10/01/91 (Pre-IMMACT 90) under the former third or sixth preference provisions will be deemed a petition to accord status under the provisions of the current section 203(b)(2) or (3), unless the alien beneficiary fails to apply for an immigrant visa or adjustment of status within 2 years after being notified that an immigrant visa is available for his or her use. [8 CFR 204.5(f)] The position of the Service is that an alien loses the benefit of this provision only if an immigrant visa continued to be available at all times during the two-year period after the alien is notified that it is available. 60 *Fed. Reg.* 29, 771, 773 (1995).

In other words, if an alien is the beneficiary of an I-140 approved under the former third or sixth preference and a new petitioner has now filed a new I-140 under 203(b)(2) or (3), then the priority date for the new I-140 will be the priority date established under the original I-140, unless the alien was notified that an immigrant visa had become available AND an immigrant visa was continuously available to the alien during the entire two-year period after the alien was notified.

Priority Dates
for 3rd or 6th
Preference
Petitions Filed
before
10/01/91, Cont.

Section 204.5(f) does not say how the alien is to be "notified." Section 245.1(g), however, says that the monthly Department of State Visa Bulletin determines when an immigrant visa becomes available. If the individual visa bulletins show that an immigrant visa was available to the alien during any continuous two-year period beginning after approval of the old 3rd or 6th preference I-140, then the priority date of the old I-140 shall not apply to the new I-140. In that case, the priority date for the new petition will be the date the DOL accepted for filing the ETA-750 filed with the new petition (or, if no individual labor certification is required, the date of filing the new I-140 with the Service).

Labor
Certifications

One important goal of the immigration laws is to ensure that employment-based immigration does not adversely affect the wages and working conditions of citizens and resident aliens already in the United States. For this reason, most E21 immigrants, and all E31, E32 and EW3 immigrants, even if qualified for the position, cannot immigrate unless the Secretary of Labor certifies that there is a shortage of qualified potential employees.

There are two basic labor certification methods: individual and blanket. For an **individual labor certification**, the prospective employer must formally apply through the Department of Labor (DOL) with the Form ETA-750. The prospective employer must take steps to attempt to fill the position with someone willing and able to work in the United States. If there is no willing, able and qualified U.S. employee, then the Department of Labor approves the labor certification.

For **blanket labor certification (Schedule A)**, the DOL has established that there is a nation-wide shortage of qualified U.S. workers, which include registered nurses, physical therapists, and aliens of exceptional ability under Schedule A.

There is another group that is not included in Schedule A that is designated or **special handling**. A sheepherder who has been working in a valid nonimmigrant status as a sheepherder for 33 of the last 36 months is not required to obtain a labor certification from DOL.

Finally, if the petitioner can demonstrate that a **waiver** of the labor certification process is **in the national interest**, then a labor certification is not needed for an E21 immigrant petition.

Successor in
Interest

Successor in interest occurs when the prospective employer of an alien has been bought out, merged, or had a significant change in its ownership. For additional information reference Addendum 1: Labor Certifications.

Beneficiary's
Signature as
Representative

A corporation is a separate and distinct legal entity from its owners or stockholders. Consequently, the beneficiary may sign the petition as a legal representative if he or she is an officer of the corporation.
[See Matter of M, 8 I&N Dec. 24 (BIA 1958), Matter of Aphrodite Investments, Ltd., 17 I&N Dec. 530 (Comm. 1980), and Matter of Tessel, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980)]

Job Offer and
Ability to Pay

For all E12, E13, E31, E32, and EW3 immigrants, an employer in the United States must be seeking the immigrant's services. This requirement also applies to E21 immigrants (except in national interest waiver cases). The prospective employer must establish that, at the time of filing the petition (or of filing the ETA-750, for individual labor certification cases), the petitioner had the ability to pay the immigrant the proffered salary or wage. The petitioner must also prove that this ability to pay continues to exist up to the time that the immigrant acquires permanent residence.

No job offer is required for E11 immigrants, or for E21 immigrants who obtain a national interest waiver. Ability to pay is not required in these cases. For more information on this topic, see Addendum 2: Ability to Pay.

204(c)
Fraudulent
Marriage
Prohibition

If a review of the beneficiary's A-file indicates that he or she has attempted or conspired to obtain an immigration benefit by virtue of a fraudulent marriage, an intent to deny or intent to revoke notice should be sent to the petitioner that outlines the basis for the 204(c) determination. The marriage must be shown to have been a sham at its inception in order for 204(c) to apply.

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of a beneficiary who has attempted or conspired to enter into a marriage for the purpose of evading immigration laws.

The Service will deny or revoke a petition for immigrant visa classification filed on behalf of any beneficiary for whom there is substantial and probative evidence of such an attempt or a conspiracy, regardless of whether the beneficiary received a benefit through the attempt or conspiracy. (Please note that this provision of law and regulation does not distinguish between Form I-130s and Form I-140s, but merely states "petition for immigrant visa classification.")

Although it is not necessary that the beneficiary have been convicted of, or even prosecuted for the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the beneficiary's A-file.

The petitioner must convincingly demonstrate that the beneficiary entered into the marriage for the purpose of starting a life with his or her spouse and not strictly for the purpose of obtaining an immigration benefit in order to overcome this ground of ineligibility.

[See section 204(c) of the Act and 8 CFR 204.2(a)(1)(ii)]

Change of
Employment
Permitted in
Cases of
Lengthy
Adjustment
Adjudication
(AC21)

AC21 Section 106(c) amended section 212(a)(5)(A) of the Act to provide that a labor certification or Form I-140 approval of an EB immigrant petition shall remain valid when an alien changes jobs, if:

- (a) a Form I-485, Application to Adjust Status, on the basis of the EB immigrant petition has been filed and remained unadjudicated for 180 days or more; and
- (b) the new job is in the same or similar occupational classification as the job for which the certification or approval was initially made.

In instances where the applicant no longer intends to be employed by the employer who sponsored him/her on the I-140, the Service should request a letter of employment from the new employer. The letter from the new employer verifying that the job offer exists should contain the new job title, job description and salary. This information is necessary to determine whether the new job is in the same or similar occupation and to determine whether the alien is admissible under the public charge ground of inadmissibility at INA §212(a)(4). To determine whether a new job is in the same or similar occupational classification as the original job for which the certification or approval was initially made, the adjudicating officer may consult the Department of Labor's Dictionary of Occupational Titles (DOT) or its online O*NET classification system or similar publications.

Some flexibility in determining that the new job is in the same or similar area is warranted beyond narrow adherence to the DOT. As such, in the absence of precise applicability of the DOT, the petitioner may be asked to provide alternate or other comparable evidence to satisfactorily demonstrate that the new job is in the same or similar area or field as the original job. As appropriate, such alternate evidence may be considered acceptable to make a determination if the new position is not clearly applicable to those available in the most current DOT. In such a case, the petitioner may be issued a RFE requesting supporting alternate evidence where it is not sufficiently clear from review of the petition and the initial evidence that accompanied the petition.

The Service is currently formulating proposed regulations to establish a policy framework in which to adjudicate AC21 §106(c) benefits. Until the Service promulgates final regulations establishing such a policy framework, adjudicators shall consult, on a case-by-case basis, with Headquarters before denying cases on the basis that the new job is not in the same or similar classification. [Office of Field Operations, HQ 70/6.2.8]

Offering an Opportunity to Change the Requested Classification

Pursuant to Opportunity for Certain Employment Based Petitioners to Change their Requested Classification [CSC 70/6], if after review, it is determined that the petitioner is requesting a classification for which the beneficiary clearly does not qualify, but the beneficiary appears to qualify for another classification, the petitioner may be offered the opportunity to change to a new classification. A RFE may be used for this purpose, but notification is not limited to the use of a RFE. Prior to suggesting such a classification change, ensure that the petition is approvable under the suggested classification. It may also be helpful to check for any additional petitions, as another petition may have already been filed for the beneficiary under the alternate classification.

Note: If the requested classification is changed for any reason, Part 2 in CLAIMS must be updated appropriately. Otherwise, the original class will be reflected on the approval notice.

Part 2: General Requirements

Adjudication

The following list is an overview of items to review and issues to consider in adjudicating an I-140 petition. Elaboration on these topics is provided in the pages that follow.

GENERAL REQUIREMENTS

1.	Determine that the Form I-140 is properly filed (<i>i.e.</i> petitioner is eligible to file, petition is filed in the proper jurisdiction and petition is properly signed).
2.	If there is a G-28, you should also review it to confirm that it is acceptable.
3.	Determine the proper priority date. (See table in Figure 5.1).
4.	Determine the requested classification by reviewing Part 2 of the I-140 petition.
5.	Determine there is evidence that the petitioner meets all requirements under the requested classification.
6.	Determine there is evidence that the beneficiary meets all requirements under the requested classification.

Note: During the course of adjudications, various deficiencies may be apparent. In regards to this SOP, “note the deficiency” does not necessarily mean to make a written note.

Procedure

The adjudicator must review the I-140 petition for general requirements. Follow the procedure as outlined below.

IBIS Checks A check of the Interagency Border Inspection System (IBIS) must be completed for all I-140 petitions before a final decision is rendered on the petition, and the petition must be notated to show the date and results of the IBIS check(s). If a check results in a positive hit, this must be resolved before the case can be adjudicated. (Reference memo HQOPS 70/23.9.) Additionally, if an applicant's name or date of birth is changed in CLAIMS at any time, a new IBIS check must be performed.

Step	Action						
2.1	<p>Verify that there is a proper and original signature in Part 8. All forms of original signature are acceptable, including an "X," thumbprint, or an original facsimile signature stamp. A TYPEWRITTEN NAME IS NOT A SIGNATURE. See Figure 5.2 below to determine who is authorized to sign the petition.</p> <p>Note: The legal representative cannot sign the petition in Part 8.</p> <table border="1"> <thead> <tr> <th>IF the signature is...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>Complete and correct</td> <td>Go to Step 2.2</td> </tr> <tr> <td>Incorrect, missing or signed by the wrong petitioner</td> <td>Note the deficiency. Go to Step 2.2.</td> </tr> </tbody> </table>	IF the signature is...	THEN...	Complete and correct	Go to Step 2.2	Incorrect, missing or signed by the wrong petitioner	Note the deficiency. Go to Step 2.2.
IF the signature is...	THEN...						
Complete and correct	Go to Step 2.2						
Incorrect, missing or signed by the wrong petitioner	Note the deficiency. Go to Step 2.2.						

Figure 5.2: Determining Who is Authorized to Sign The Petition

Classification	Signature Required
E11	Petitioner, or Beneficiary if self-petitioning
E12	Petitioner (Must be U.S. employer)
E13	Petitioner (Must be U.S. employer)
E21 for National Interest Waiver	Petitioner, or Beneficiary if self-petitioning
E21 with Individual Labor Certification	Petitioner (Must be U.S. employer)
E21 for Exceptional Ability, Schedule A, Group II	Petitioner (Must be U.S. employer)
E31, E32, EW3	Petitioner (Must be U.S. employer)

2.2	<p>Review Part 6 of the I-140 petition for jurisdiction.</p> <p>A) Look at the address where the beneficiary will work in Part 6 of the petition.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>All work locations are in your center's jurisdiction (see jurisdiction table below).</td> <td>Go to Step 2.3.</td> </tr> </tbody> </table>	IF...	THEN...	All work locations are in your center's jurisdiction (see jurisdiction table below).	Go to Step 2.3.
IF...	THEN...				
All work locations are in your center's jurisdiction (see jurisdiction table below).	Go to Step 2.3.				

Locations in multiple centers' jurisdictions, including yours, are listed OR no locations are listed	Proceed to part B below.
No listed work locations are in your center's jurisdiction	Proceed to part C below.

B) Look at the address in Part 1 of the petition or Part 3 if Part 1 is blank.

IF...	THEN...
The address is in your center's jurisdiction (see jurisdiction tables below).	Go to Step 2.3.
The address is not in your center's jurisdiction	Proceed to Part C below.

C) Check to see if the employer is on your center's sole jurisdiction list.

IF...	THEN...
If the employer is on your center's sole jurisdiction list	Go to Step 2.3.
If the employer is not on your center's sole jurisdiction list	Route to proper jurisdiction according to local relocation procedure.

STANDARD JURISDICTION

State/Territory	Service Center
AZ, CA, Guam, HI, NV	CSC
AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, SD, UT, WI, WA, WY, OR	NSC
AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX	TSC
DC, CT, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VI, VT, WV	VSC

2.3	If there is a G-28, you should review it to confirm that it is acceptable. ,	
	If the G-28 has...	THEN...

	<ul style="list-style-type: none"> • Block 2-Petitioner's name and address • Block 3-A box checked and appropriate text entry, representative's original signature (original facsimile stamp is acceptable), address, printed name, and phone number • Block 4-Representative's name, name and original signature of person consenting, and date (an original facsimile stamp is acceptable) 	The G-28 is acceptable. Go to Step 2.4.
	Any of the above information lacking	The G-28 is unacceptable. Delete the G-28 from CLAIMS and follow local procedures for invalidating the G-28. Go to Step 2.4.
<p>Note: Check to see that the representative has not been suspended or barred from practice before the Immigration Service.</p>		
2.4	Determine priority date based on the chart above in Figure 5.1 in the Adjudications Overview. Annotate the priority date in the designated field under the U.S. CIS USE ONLY section in the lower right-hand side of the I-140 petition.	

2.5	<p>Review Part 2 to determine the requested classification:</p> <ul style="list-style-type: none"> a) Alien of extraordinary ability b) Outstanding professor or researcher c) Multinational executive or manager d) Member of profession with an advanced degree or exceptional ability e) Skilled worker or professional f) National Interest Waiver g) Other worker i) Alien applying for National Interest Waiver 											
<p>Note: In older versions of the I-140 form, classification "f" was "Other worker", classification "g" was "Employee of U.S. business in Hong Kong", and classification "h" was "Soviet scientist".</p>												
<table border="1"> <thead> <tr> <th data-bbox="386 1669 760 1711">IF ...</th> <th data-bbox="760 1669 1203 1711">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 1711 760 1753">Box "a" is checked</td> <td data-bbox="760 1711 1203 1753">Go to Step 3.1.</td> </tr> <tr> <td data-bbox="386 1753 760 1795">Box "b" is checked</td> <td data-bbox="760 1753 1203 1795">Go to Step 4.1.</td> </tr> <tr> <td data-bbox="386 1795 760 1837">Box "c" is checked</td> <td data-bbox="760 1795 1203 1837">Go to Step 5.1.</td> </tr> <tr> <td data-bbox="386 1837 760 1866">Box "d" is checked</td> <td data-bbox="760 1837 1203 1866">Go to Step 6.1.</td> </tr> </tbody> </table>			IF ...	THEN...	Box "a" is checked	Go to Step 3.1.	Box "b" is checked	Go to Step 4.1.	Box "c" is checked	Go to Step 5.1.	Box "d" is checked	Go to Step 6.1.
IF ...	THEN...											
Box "a" is checked	Go to Step 3.1.											
Box "b" is checked	Go to Step 4.1.											
Box "c" is checked	Go to Step 5.1.											
Box "d" is checked	Go to Step 6.1.											

	Box "e" is checked.	Review Labor Certification to determine position: -If alien is applying as a skilled worker, go to Step 7.1. -If applying as a professional, go to Step 8.1. See Addendum 3: Evaluating Evidence for guidelines on how to determine the position.
	Box "g" is checked	Go to Step 9.1.
	Box "i" is checked	Go to Step 6.1.

Part 3: E11-Aliens of Extraordinary Ability

Introduction Extraordinary ability means a level of expertise indicating that the individual is part of that small percentage that has risen to the very top of the field of endeavor. Aliens of extraordinary ability in the arts, sciences, business, athletics, etc., are those who have demonstrated sustained national or international acclaim and whose achievements have been recognized in the field.

Statutory Basis Section 203(b)(1)(A) of the Act makes provision for permanent positions for certain aliens of extraordinary ability. The immigrant classification for this section of law is E11.

Regulatory Basis The Service has responsibility for determining whether the alien beneficiary is eligible for E11 classification. [8 CFR 204.5(h)(1)]

Petitioner Requirements An alien (self-petitioner) or any person on behalf of the alien may file an E11 petition. The only requirement is that the petitioner must sign the petition in Block 8. If self-petitioning, the alien must meet the petitioner and the beneficiary requirements.

Note: No labor certification or ability to pay is required for the E11 classification.

Beneficiary Requirements In order to qualify as an alien of extraordinary ability, one must:

- Have sustained national or international acclaim;
- Come to the United States to continue in the same field of endeavor; and
- Substantially benefit prospectively the United States.

Step	Action: U.S. CIS
3.1	Review for general requirements. See Part 2 of this module.
3.2	Review for petitioner requirements (proper signature).

3.3	<p>Review the documentation to determine the alien's field of expertise. Then determine that he or she is coming to the United States to continue work in that field of endeavor (see the requirements below).</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center; padding: 5px;">IF...</th> <th style="text-align: center; padding: 5px;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">Employment evidence is present,</td> <td style="text-align: center; padding: 5px;">Go to Step 3.4.</td> </tr> <tr> <td style="text-align: center; padding: 5px;">Employment evidence is not present,</td> <td style="text-align: center; padding: 5px;">Note this deficiency. Go to Step 3.4.</td> </tr> </tbody> </table>	IF...	THEN...	Employment evidence is present,	Go to Step 3.4.	Employment evidence is not present,	Note this deficiency. Go to Step 3.4.
IF...	THEN...						
Employment evidence is present,	Go to Step 3.4.						
Employment evidence is not present,	Note this deficiency. Go to Step 3.4.						

Continuing Work in the Area of Expertise

Although no offer of employment is required, the petition must be accompanied by evidence to establish that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include:

- A letter(s) from the prospective employer(s)
- Contracts for prearranged work
- A statement from the beneficiary detailing plans
- Other appropriate evidence to establish the beneficiary will work in the field of expertise

3.4	<p>Verify that the beneficiary qualifies as an alien of extraordinary ability (see criteria below).</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center; padding: 5px;">IF...</th> <th style="text-align: center; padding: 5px;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">The beneficiary has established that he or she is an alien of extraordinary ability who has <u>sustained</u> national or international acclaim and whose achievements have been recognized in the field of expertise</td> <td style="text-align: center; padding: 5px;">Go to Step 3.5.</td> </tr> <tr> <td style="text-align: center; padding: 5px;">The beneficiary does not qualify</td> <td style="text-align: center; padding: 5px;">Note this deficiency. Go to Step 3.5.</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary has established that he or she is an alien of extraordinary ability who has <u>sustained</u> national or international acclaim and whose achievements have been recognized in the field of expertise	Go to Step 3.5.	The beneficiary does not qualify	Note this deficiency. Go to Step 3.5.
IF...	THEN...						
The beneficiary has established that he or she is an alien of extraordinary ability who has <u>sustained</u> national or international acclaim and whose achievements have been recognized in the field of expertise	Go to Step 3.5.						
The beneficiary does not qualify	Note this deficiency. Go to Step 3.5.						

Extraordinary
Ability Criteria

In order to establish that an alien has **sustained** national or international acclaim and that his or her achievements have been recognized in the field of expertise, 8 CFR 204.5(h)(3) requires that the record should include one of the following:

- Evidence of a one-time achievement (that is, a major, internationally-recognized award).
- If the record does not include a major award, the beneficiary must then qualitatively meet at least three of the following ten criteria:
 1. A nationally or internationally-recognized prize or award for excellence;
 2. Membership in an association which requires outstanding achievements for membership;
 3. Published material in professional or trade publications or in major media publications about the beneficiary's work;
 4. Evidence that the beneficiary has served as a judge of the work of others in the same field, either individually or as a member of a panel;
 5. Evidence of beneficiary's original scientific, scholarly, artistic, or business related contributions of major significance;
 6. Evidence of alien's authorship of scholarly articles in professional or major trade publications or other major media;
 7. Evidence of display of alien's work at artistic exhibitions or showcases;
 8. Evidence that beneficiary has performed in a leading or critical role for organizations and establishments that have a distinguished reputation;
 9. Evidence that the beneficiary commands a high salary or other significantly high remuneration for services; and
 10. Evidence of commercial success in the performing arts (box office receipts, record sales, video sales, etc.).
- If the above standards do NOT readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

Sustained
Recognition

Sustained means: lasting, uninterrupted, continued, constant, and persistent. If an alien was recognized for a particular achievement several years ago, determine if the alien has maintained a comparable level of acclaim in the field of expertise since the alien was originally afforded that recognition. An alien may have achieved extraordinary ability in the past but then failed to maintain a comparable level of acclaim thereafter.

Establishing
Beneficiary
Requirements

The following are general guidelines that may be used to establish a beneficiary's extraordinary ability:

Important: It is the quality and caliber of the evidence and not merely the quantity, which determines the significance of the beneficiary's contributions.

Note: Eligibility as an O-1 nonimmigrant does not automatically establish eligibility under the permanent resident criteria for extraordinary ability. The requirements for the nonimmigrant category of O-1 under 8 CFR 214.2(o)(3)(iv) differ significantly from those requirements under 8 CFR 204.5(h)(3) for the permanent resident classification of an alien of extraordinary ability in the arts.

Step 3.4 (cont)	Establishing Beneficiary Requirements for Extraordinary Ability
1	Review for evidence of a one-time achievement (that is, a major, internationally-recognized award). Examples of the caliber of awards intended for this classification might include the Pulitzer or Nobel Prizes.
2	If the record does not include a major award, the beneficiary must then qualitatively meet at least three of the following ten criteria:

3.4 (cont) 2	2a	<p>A nationally or internationally-recognized prize or award for excellence. The evidence should clearly establish that the award is national or international in scope, rather than local, regional, or provincial in nature. Academic awards (master's and doctorate's degrees, Dean's List, Chair's list, Phi Beta Kappa, honors society, valedictorian, or fellowships) received while pursuing an education do not qualify under this category because they are normally limited to the individual school making the award.</p> <p>Finally, the evidence should clearly establish the origination, purpose, and significance of each award, and how the award has set the alien apart as one of the few whom are at the very top of their field of endeavor.</p>
	2b	<p>Membership in an association, which requires outstanding achievements for membership. This evidence should provide the minimum requirements and criteria used to obtain membership in the association in which the alien claims membership to determine if the association requires outstanding achievements of its members. Additional evidence may include proof of the total number of current members, the beneficiary's rank compared to other members in the association, the status held by the association in the international community in the field of endeavor, and any other conditions or requirements of membership.</p>

<p>3.4 (cont) 2</p>	<p>2c</p>	<p>Published material in professional or trade publications or in major media publications <u>about the beneficiary's work</u>. The evidence should establish the significance of the published material submitted about the alien's work and how it has set the alien apart from others as one of that small percentage who have risen to the very top of their field. Additionally, in order to help in determining the value of the material, the evidence should include the publication's name; the number of times it is published each year; the number of copies printed; and whether it has local, national, or international circulation.</p> <p>Scientific footnotes in the research papers of others and entries in a citation index do not usually constitute published material about the beneficiary. The other scientists are legally obligated to identify any component of their research of others. While this demonstrates that others are aware of his work, unevaluated listings in a subject matter index or footnote or reference to the work without evaluation is insufficient to establish its significance. The exception to this is if the beneficiary is specifically cited as being authoritative in the field of endeavor.</p>
<p>3.4 (cont) 2</p>	<p>2d</p>	<p>Evidence that the beneficiary has served as a judge of the work of others in the same field, either individually or as a member of a panel. The evidence should establish the significance of the work judged by the alien and the criteria used to choose the alien as a judge. Was the alien chosen through a competitive process from a pool of highly skilled candidates?</p>
<p>3.4 (cont) 2</p>	<p>2e</p>	<p>Evidence of beneficiary's original scientific, scholarly, artistic, or business related contributions of major significance. The mere submission of volumes of research papers and scholarly articles, or other artistic and business contributions, and making unsupported and generalized statements claiming the beneficiary has made original contributions of major significance does not establish eligibility for this category. The record should include significant documentation to establish how the alien's work is considered original and how it has made a major contribution of significance to the field of endeavor compared to all others in the field, and the credentials of the individual, institution, or organization making the claim.</p>

	2f	<p>Evidence of alien’s authorship of scholarly articles in professional or major trade publications or other major media. Again, more than just submitting stacks of copies of scholarly articles, the evidence should establish the significance or value of the published material and how it has set the alien apart from others in the field as one of that small percentage who have risen to the very top of their field.</p> <p>Remember, scholarly articles where the beneficiary is the <u>primary author</u> of an article, that is, the first person listed in a group of authors, may hold more value than if the beneficiary is included as only a co-author.</p>
	2g	<p>Evidence of display of alien’s work at artistic exhibitions or showcases. The evidence should establish the significance of the exhibition or showcase where the alien’s work has been displayed.</p>
<p>3.4 (cont) 2</p>	2h	<p>Evidence that beneficiary has performed in a leading or critical role for organizations and establishments that have a distinguished reputation. The evidence should show that the alien has played more than just a supporting role and that the organization or establishment has a distinguished reputation or has hosted other distinguished productions in the past.</p>
	2i	<p>Evidence that the beneficiary commands a high salary or other significantly high remuneration for services. Generally speaking, a high salary is fairly easily determined because it is <u>quantifiable and seen infrequently</u>. If it is still unclear that the beneficiary has commanded significantly high remuneration for services, a statistical comparison of the salaries in the particular field from the Economic Research Institute, or like organization, may assist in determining significantly high remuneration for services compared to all others in the field and locality.</p>
	2j	<p>Evidence of commercial success in the performing arts (box office receipts, record sales, video sales, etc.). This evidence should clearly link the alien to the claimed commercial successes. Did the alien play more than a subordinate or supporting role in the commercial success of the production?</p>
3	<p>If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.</p>	

Letters of Recommendation Letters from experts in the field of endeavor may be helpful when assessing the significance of the beneficiary's contributions to the field. Frequently, letters are submitted as evidence that make general assertions about the beneficiary; that merely indicate that he or she is a competent, respected figure within the field of endeavor; and/or that cite little or no concrete evidence in support of the assertions. These letters should be considered but do not necessarily show the beneficiary's extraordinary ability.

3.5	Verify that the beneficiary's work will substantially benefit prospectively the United States (see guidelines below).	
	IF...	THEN...
	The beneficiary's work will substantially benefit the United States	Go to Step 3.6.
	The beneficiary's work will NOT substantially benefit the United States	Note the deficiency. Go to Step 3.6.

Substantially Benefit the United States The regulations do not specifically address this INA requirement. However, the precedent decision, Matter of Price, 20 I&N Dec. 953 (Assoc. Comm. 1994) provides guidance on this matter. Generally speaking, a substantial benefit to the U.S. in any of its aspects, interests or needs will do, as aliens who work in the area of their extraordinary ability will substantially benefit the interests of the U.S. in some fashion and pass this test.

3.6	After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements as specified to qualify as an alien of extraordinary ability.	
	IF...	THEN...
	The beneficiary qualifies as an alien of extraordinary ability	Go to Step 10a.1 and follow instructions for processing approvals.
	Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service	Go to Step 10b.1 and follow instructions for processing Intents to Deny.
	Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification	Go to Step 10c.1 and follow instructions for processing Requests for Evidence.

The case involves an unusually complex or novel issue of law or fact	The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.
The beneficiary does not qualify as an alien of extraordinary ability and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible	Go to Step 10e.1 and follow instructions for processing denials.

Adverse or Derogatory Information

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except when the petitioner or beneficiary is determined to be statutorily ineligible.

[8 CFR 103.2(b)(16)]

Part 4: E12-Outstanding Professors and Researchers

- Introduction** An outstanding professor and researcher is someone who is recognized internationally as outstanding in their academic achievements.
- Statutory Basis** Section 203 (b)(1)(B) of the Act makes provision for permanent positions for outstanding professors and researchers. The immigrant classification for this section of law is E12.
- Regulatory Basis** The Service has responsibility for determining whether the alien beneficiary is eligible for the E12 classification and whether the petitioner is a qualifying organization. [8 CFR 204.5(i)]
- Petitioner Requirements** The petitioner must meet the following requirements:
- Establish that they are a university or institution of higher education offering a tenured or tenure-track teaching position or a permanent research position in the alien’s academic field, and/or a private employer offering a permanent research position; and
 - Demonstrate the ability to pay.

Note: Alien is statutorily ineligible to self-petition for this classification.

- Beneficiary Requirements** In order to qualify as an outstanding professor or researcher, one must:
- Have at least three years of experience in teaching or research in that academic area;
 - Prove that the professor or researcher is recognized internationally; and
 - Prove that he/she is coming to the U.S. to work in a tenured or tenure-track teaching or comparable research position at a university or other institution of higher education, or comparable position in private industry.

Step	Action: U.S. CIS
4.1	Review for general requirements. See Part 2 of this module.

4.2	Review for petitioner requirements: Ensure that the petitioner is a qualifying facility (see Petitioner Requirements above).						
	<table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The requirement IS met</td> <td>Go to Step 4.3 to review additional petitioner requirements.</td> </tr> <tr> <td>The requirement is NOT met</td> <td>Note the deficiency. Go to Step 4.3.</td> </tr> </tbody> </table>	IF...	THEN...	The requirement IS met	Go to Step 4.3 to review additional petitioner requirements.	The requirement is NOT met	Note the deficiency. Go to Step 4.3.
IF...	THEN...						
The requirement IS met	Go to Step 4.3 to review additional petitioner requirements.						
The requirement is NOT met	Note the deficiency. Go to Step 4.3.						
4.3	The petitioner must submit an offer of employment in the form of letter (see details below).						
	<table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>This requirement IS provided</td> <td>Go to Step 4.4 to review additional petitioner requirements.</td> </tr> <tr> <td>This requirement is NOT provided</td> <td>Note the deficiency. Go to Step 4.4.</td> </tr> </tbody> </table>	IF...	THEN...	This requirement IS provided	Go to Step 4.4 to review additional petitioner requirements.	This requirement is NOT provided	Note the deficiency. Go to Step 4.4.
IF...	THEN...						
This requirement IS provided	Go to Step 4.4 to review additional petitioner requirements.						
This requirement is NOT provided	Note the deficiency. Go to Step 4.4.						

Offer of
Employment

Although a labor certification is not required for the E12 classification, the petitioner must still provide an offer of employment. An offer of employment shall be in the form of a letter from:

- A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position* in the alien's academic field*
- A United States university or institution of higher learning offering the alien a permanent research position* in the alien's academic field
- A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. It must be clearly shown that the employer has at least three persons working full-time in research positions AND that the employer has achieved documented accomplishments in an academic field.

***Note:** See definition for **permanent position** and **academic field** in 8 CFR 204.5(i)(2).

4.4	<p>Petitioner requirement: Review for evidence of ability to pay. See Addendum 2: Ability to Pay for rules to establish a petitioner's ability to pay.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">There is evidence of ability to pay</td> <td style="text-align: center;">Go to Step 4.5.</td> </tr> <tr> <td style="text-align: center;">There is NO evidence of ability to pay</td> <td style="text-align: center;">Note the deficiency. Go to Step 4.5.</td> </tr> </tbody> </table>	IF...	THEN...	There is evidence of ability to pay	Go to Step 4.5.	There is NO evidence of ability to pay	Note the deficiency. Go to Step 4.5.
IF...	THEN...						
There is evidence of ability to pay	Go to Step 4.5.						
There is NO evidence of ability to pay	Note the deficiency. Go to Step 4.5.						

4.5	<p>Review the petition to determine that the professor or researcher is recognized <u>internationally</u> as outstanding in the academic field specified in the petition. (See requirements below)</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">At least two of the aforementioned criteria ARE met</td> <td style="text-align: center;">Go to Step 4.6.</td> </tr> <tr> <td style="text-align: center;">At least two of the aforementioned criteria are NOT met</td> <td style="text-align: center;">Note the deficiency. Go to Step 4.6.</td> </tr> </tbody> </table>	IF...	THEN...	At least two of the aforementioned criteria ARE met	Go to Step 4.6.	At least two of the aforementioned criteria are NOT met	Note the deficiency. Go to Step 4.6.
IF...	THEN...						
At least two of the aforementioned criteria ARE met	Go to Step 4.6.						
At least two of the aforementioned criteria are NOT met	Note the deficiency. Go to Step 4.6.						

Outstanding
Professor or
Researcher
Criteria

In order to show that a professor or researcher is recognized internationally as outstanding in the academic field specified in the petition, the petitioner must present evidence of two of the following six criteria:

1. Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
2. Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
3. Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
4. Evidence of the alien's participation, either individually or on a panel as the judge of the work of others in the same or an allied academic field;
5. Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
6. Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

Establishing
Beneficiary
Requirements

The following are general guidelines that may be used to establish a beneficiary as an outstanding professor or researcher:

Important: It is the quality and caliber of the evidence and not merely the quantity, which determines the significance of the beneficiary's contributions.

4.5 (cont)	Establishing Beneficiary Requirements for an Outstanding Professor or Researcher
1	<p>Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field. The evidence should help to establish the origin, purpose, significance and scope of each award, and how the award has contributed to the beneficiary's international recognition.</p> <p>The evidence should clearly establish that the award is national or international in scope, rather than local, regional, or provincial in nature. Please note that student certificates of appreciation, grants, tuition waivers, and fellowships are routinely awarded to individuals with academic merit or economic need and are not considered to be indicative of the beneficiary's claimed national or international acclaim.</p>

2	<p>Documentation of the alien's membership in associations in the academic field, which require outstanding achievements of their members. This evidence should provide the minimum requirements and criteria used to obtain membership in the association in which the alien claims membership to determine if the association requires outstanding achievements of its members. Additional evidence may include proof of the total number of current members, the beneficiary's rank compared to other members in the association, the status held by the association in the international community in the field of endeavor, and any other conditions or requirements of membership.</p>
3	<p>Published material in professional publications written by others <u>about</u> the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation. The evidence should establish the significance of the published material submitted about the alien's work and how it demonstrates the alien's <u>international recognition</u> for outstanding achievement compared to others in the academic field. Also, in order to help in determining the value of the material, the evidence should include the publication's name; the number of times it is published each year; the number of copies printed; and whether it has local, national, or international circulation.</p> <p>Scientific footnotes in the research papers of others and entries in a citation index do not usually constitute published material about the beneficiary. The other scientists are legally obligated to identify any component of their research of others. While this demonstrates that others are aware of his work, unevaluated listings in a subject matter index or footnote or reference to the work without evaluation is insufficient to establish its significance. The exception to this is if the beneficiary is specifically cited as being authoritative in the field of endeavor.</p>
4	<p>Evidence of the alien's participation, either individually or on a panel as the judge of the work of others in the same or an allied academic field. The evidence should establish the significance of the work judged by the alien and the criteria used to choose the alien as a judge. Was the alien chosen through a competitive process from a pool of highly skilled candidates?</p>

5	<p>Evidence of the alien’s original scientific or scholarly research contributions to the academic field. The mere submission of volumes of research papers and scholarly articles along with unsupported and generalized claims of the beneficiary’s original contributions to the academic field, do not establish eligibility for this category. The record should include significant documentation to establish how the alien’s work is considered an original contribution to the academic field and how it has gained <u>international recognition</u> for the alien. Additionally, the evidence should include the credentials of the individual, institution, or organization making the claim to determine its value.</p>
6	<p>Evidence of the alien’s authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field. Again, more than just submitting stacks of copies of scholarly articles, the evidence should establish the significance or value of the published material and how it has gained <u>international recognition</u> for the alien.</p> <p>Remember, scholarly articles where the beneficiary is the <u>primary author</u> of an article, that is, the first person listed in a group of authors, may hold more value than if the beneficiary is included as only a co-author.</p>

Letters of Recommendation Letters from experts in the field of endeavor may be helpful when assessing the significance of the beneficiary’s contributions to the field. Frequently, letters are submitted as evidence that make general assertions about the beneficiary; that merely indicate he or she is a competent, respected figure within the field of endeavor; and/or that cite little or no concrete evidence in support of the assertions. These letters should be considered but do not necessarily show the beneficiary’s extraordinary ability.

4.6	<p>Review the petition for letters from employers that evidence the beneficiary’s three years of experience in teaching or research. (See requirements below)</p> <table border="1" data-bbox="386 1413 1206 1654"> <thead> <tr> <th data-bbox="386 1413 797 1451">IF...</th> <th data-bbox="797 1413 1206 1451">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 1451 797 1551">Evidence of 3 years of teacher/research experience IS found</td> <td data-bbox="797 1451 1206 1551">Go to Step 4.7.</td> </tr> <tr> <td data-bbox="386 1551 797 1654">Evidence of 3 years of teacher/research experience is NOT found</td> <td data-bbox="797 1551 1206 1654">Note the deficiency. Go to Step 4.7.</td> </tr> </tbody> </table>	IF...	THEN...	Evidence of 3 years of teacher/research experience IS found	Go to Step 4.7.	Evidence of 3 years of teacher/research experience is NOT found	Note the deficiency. Go to Step 4.7.
IF...	THEN...						
Evidence of 3 years of teacher/research experience IS found	Go to Step 4.7.						
Evidence of 3 years of teacher/research experience is NOT found	Note the deficiency. Go to Step 4.7.						

Evidence of Experience

Evidence of teaching and/or research experience shall be in the form of letter(s) from current or former employers(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

The petitioner must establish that the alien has at least three years of experience in teaching and/or research in the academic field.

Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree. Additionally, the experience gained by teaching must have been such that the alien had full responsibility for the class taught. If the experience was gained while conducting research toward the degree, then the research must have been recognized within the academic field as outstanding.

4.7	<p>After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements as specified to qualify as an outstanding professor or researcher.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">IF...</th> <th style="text-align: center; padding: 5px;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">The beneficiary qualifies as an outstanding professor or researcher</td> <td style="padding: 5px;">Go to Step 10a.1 and follow instructions for processing approvals.</td> </tr> <tr> <td style="padding: 5px;">Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service</td> <td style="padding: 5px;">Go to Step 10b.1 and follow instructions for processing Intents to Deny.</td> </tr> <tr> <td style="padding: 5px;">Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification</td> <td style="padding: 5px;">Go to Step 10c.1 and follow instructions for processing Requests for Evidence.</td> </tr> <tr> <td style="padding: 5px;">The case involves an unusually complex or novel issue of law or fact</td> <td style="padding: 5px;">The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.</td> </tr> <tr> <td style="padding: 5px;">The beneficiary does not qualify as an outstanding professor or researcher and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible</td> <td style="padding: 5px;">Go to Step 10e.1 and follow instructions for processing denials.</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary qualifies as an outstanding professor or researcher	Go to Step 10a.1 and follow instructions for processing approvals.	Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service	Go to Step 10b.1 and follow instructions for processing Intents to Deny.	Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification	Go to Step 10c.1 and follow instructions for processing Requests for Evidence.	The case involves an unusually complex or novel issue of law or fact	The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.	The beneficiary does not qualify as an outstanding professor or researcher and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible	Go to Step 10e.1 and follow instructions for processing denials.
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Adverse or Derogatory Information

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except when the petitioner or beneficiary is determined to be statutorily ineligible.

[8 CFR 103.2(b)(16)]

Part 5: E13-Multinational Executive or Manager

Introduction

A qualifying United States employer may file a Form I-140 petition on behalf of an alien beneficiary requesting classification as a multinational executive or manager.

Statutory Basis

Section 203(b)(1)(C) of the Act makes provision for permanent positions for certain managers and executives. The immigrant classification for this section of law is E13.

Regulatory Basis

The Service has responsibility for determining whether the alien beneficiary is eligible for the E13 classification and whether the petitioner is a qualifying organization. [See 8 CFR 204.5(j)(1)]

Petitioner Eligibility Requirements

The petitioner must demonstrate that the:

- U.S. organization and the organization abroad are qualifying organizations;
- U.S. organization and the organization abroad are both actively engaged in doing business;
- U.S. organization has been actively engaged in doing business for at least one year; and
- U.S organization has the ability to pay the beneficiary's salary.

[See 8 CFR 204.5(j)(3) and 8 CFR 204.5(g)(2)]

Beneficiary Eligibility Requirements

The petitioner must demonstrate that the:

- Beneficiary has been employed in a primarily executive or managerial capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition; and
- Beneficiary will be employed in a primarily executive or managerial capacity with a qualifying organization in the United States.

[See 8 CFR 204.5(j)(3) and 8 CFR 204.5(g)(2)]

Step	Action: U.S. CIS		
5.1	Review for general requirements.		
5.2	Review for petitioner requirements: Determine whether the petitioner has the ability to pay the proffered wage. See Addendum 2: Ability to Pay for instructions on determining a petitioner's ability to pay.		
	<table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">IF...</td> <td style="text-align: center;">THEN...</td> </tr> </table>	IF...	THEN...
IF...	THEN...		

	<table border="1"> <tr> <td>The petitioner has the ability to pay</td> <td>Go to Step 5.3</td> </tr> <tr> <td>The petitioner does not have the ability to pay</td> <td>Note the deficiency. Go to Step 5.3.</td> </tr> </table>	The petitioner has the ability to pay	Go to Step 5.3	The petitioner does not have the ability to pay	Note the deficiency. Go to Step 5.3.		
The petitioner has the ability to pay	Go to Step 5.3						
The petitioner does not have the ability to pay	Note the deficiency. Go to Step 5.3.						
5.3	<p>Determine whether a qualifying relationship exists between the foreign employer and the U.S. employer (see requirements below).</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>A qualifying relationship exists</td> <td>Go to Step 5.4</td> </tr> <tr> <td>A qualifying relationship does NOT exist</td> <td>Note the deficiency and go to Step 5.4.</td> </tr> </tbody> </table>	IF...	THEN...	A qualifying relationship exists	Go to Step 5.4	A qualifying relationship does NOT exist	Note the deficiency and go to Step 5.4.
IF...	THEN...						
A qualifying relationship exists	Go to Step 5.4						
A qualifying relationship does NOT exist	Note the deficiency and go to Step 5.4.						

Qualifying Relationships

When an employer wishes to transfer an alien employee working abroad to a U.S. company location as an E13 immigrant, a qualifying relationship must exist between the foreign employer and the U.S. employer. A qualifying relationships exists when:

- The U.S. employer is an affiliate or a subsidiary of the foreign firm, corporation, or other legal entity as specified in 8 CFR 204.5(j)(2); and
- A United States or foreign firm, corporation, or other legal entity, which is doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the beneficiary's stay in the United States as an intra-company transferee.

Subsidiary

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; owns, directly or indirectly, half of the entity and controls the entity; owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

Affiliate

There are three categories of qualifying affiliate relationships, to include:

(1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual;

(2) One of two legal entities owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity, or

(3) A partnership that is:

- Organized in the United States;
- To provide accounting, managerial, and/or consulting services;
- Under an agreement with a worldwide coordinating organization;
- Collectively owned and controlled by member accounting and management consulting firms or by the elected members (partners, shareholders, members, employees). A partnership (or similar organization) that is organized outside the United States to provide accounting services is considered an affiliate of the United States partnership if:
 - It markets its accounting services under the same internationally recognized name;
 - It is under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

The partnerships that are considered affiliates under this subsection shall continue to be considered affiliates to the extent such firms enter into a plan of association with a successor worldwide coordinating organization, which need not be collectively owned and controlled.

Doing Business Defined

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization.

Doing business does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. [See 8 CFR 204.5(j)(2)]

Foreign Employer Must Continue to do Business

Both the United States employer and at least one qualifying organization abroad must be doing business up until the time of visa issuance. The mere presence of an office or an agent either in the U.S. or abroad is not considered to be doing business for E13 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad. [See 8 CFR 204.5(j)(2)]

5.4	Petitioner requirement: Review evidence to determine whether the business has been operating for at least one year.		
	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">IF...</td> <td style="width: 50%; text-align: center;">THEN...</td> </tr> </table>	IF...	THEN...
IF...	THEN...		

The business has been operating for at least one year	Go to Step 5.5.
The business has NOT been operation for at least one year	Note this deficiency. Go to Step 5.5.

U.S. Petitioner must have been Doing Business for At Least One Year The U.S. petitioner must be actively engaged in doing business for at least one year at the time of filing of the petition. [See 8 CFR 204.5(j)(3)(i)(D)]

A U.S. organization may have a legal existence in the United States for more than one year, but if it has not engaged in the continuous provision of goods and/or services for at least one year, then the organization is ineligible to file E13 petitions.

5.5	<p>Review for beneficiary requirements. Determine whether the beneficiary has been employed in a primarily executive or managerial capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition (see guidelines below for determining managerial and executive capacity).</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The beneficiary meets this requirement</td> <td>Go to Step 5.6.</td> </tr> <tr> <td>The beneficiary does NOT meet this requirement</td> <td>Note the deficiency and go to Step 5.6.</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary meets this requirement	Go to Step 5.6.	The beneficiary does NOT meet this requirement	Note the deficiency and go to Step 5.6.
IF...	THEN...						
The beneficiary meets this requirement	Go to Step 5.6.						
The beneficiary does NOT meet this requirement	Note the deficiency and go to Step 5.6.						
5.6	<p>Beneficiary requirement: Determine whether the beneficiary will be employed in a primarily executive or managerial capacity with a qualifying organization in the United States (see guidelines below for determining managerial and executive capacity).</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The beneficiary meets this requirement</td> <td>Go to Step 5.7.</td> </tr> <tr> <td>The beneficiary does NOT meet this requirement</td> <td>Note the deficiency and go to Step 5.7.</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary meets this requirement	Go to Step 5.7.	The beneficiary does NOT meet this requirement	Note the deficiency and go to Step 5.7.
IF...	THEN...						
The beneficiary meets this requirement	Go to Step 5.7.						
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Managing or Directing a Function A manager or executive may manage, or direct the management of, a function of an organization. However, it must be clearly demonstrated that the function is not directly performed by the manager or executive.

Manager
Capacity
Defined

Managerial capacity means an assignment within an organization in which the employee ***primarily***:

- Manages the organization, department, subdivision, function, or component of the organization;
- Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Note: If staffing levels are used to determine whether a beneficiary's job capacity is primarily "executive" or "managerial" in nature, the reasonable needs of the business enterprise in light of its overall purpose and stage of development shall be considered.

Executive
Capacity
Defined

Executive capacity means an assignment within an organization in which the employee ***primarily***:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

Note: If staffing levels are used to determine whether a beneficiary's job capacity is primarily "executive" or "managerial" in nature, the reasonable needs of the business enterprise in light of its overall purpose and stage of development shall be considered.

L1
Nonimmigrant
Classification
vs. E13
Immigrant
Classification

Unlike the L1 nonimmigrant classification, there is no provision of law that allows an individual who was/is employed in a purely specialized knowledge capacity abroad to be classified as an E13 immigrant. However, it should be noted that some E13 beneficiaries who are classified as L1B nonimmigrants might qualify for the E13 classification because their specialized knowledge employment abroad also would have qualified as managerial or executive employment.

While the nonimmigrant L1 classification may be granted to an alien employee of a new office (doing business for less than one year), the immigrant E13 classification contains no parallel provision. The petitioning enterprise must have been doing business for at least one year as of the date the I-140 is properly filed with the service.

5.7	<p>After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements as specified under the E13 classification.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">IF...</th> <th style="text-align: center; padding: 5px;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">The beneficiary qualifies under the E13 classification</td> <td style="padding: 5px;">Go to Step 10a.1 and follow instructions for processing approvals.</td> </tr> <tr> <td style="padding: 5px;">Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service</td> <td style="padding: 5px;">Go to Step 10b.1 and follow instructions for processing Intents to Deny.</td> </tr> <tr> <td style="padding: 5px;">Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification</td> <td style="padding: 5px;">Go to Step 10c.1 and follow instructions for processing Requests for Evidence.</td> </tr> <tr> <td style="padding: 5px;">The case involves an unusually complex or novel issue of law or fact</td> <td style="padding: 5px;">The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.</td> </tr> <tr> <td style="padding: 5px;">The beneficiary does not qualify under the E13 classification and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible</td> <td style="padding: 5px;">Go to Step 10e.1 and follow instructions for processing denials.</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary qualifies under the E13 classification	Go to Step 10a.1 and follow instructions for processing approvals.	Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service	Go to Step 10b.1 and follow instructions for processing Intents to Deny.	Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification	Go to Step 10c.1 and follow instructions for processing Requests for Evidence.	The case involves an unusually complex or novel issue of law or fact	The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.	The beneficiary does not qualify under the E13 classification and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible	Go to Step 10e.1 and follow instructions for processing denials.
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Derogatory
Information

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except when the petitioner or beneficiary is determined to be statutorily ineligible.

[8 CFR 103.2(b)(16)]

Part 6: E21-Advanced Degree Professionals

Introduction

The E21 classification is for aliens who are members of the professions holding advanced degrees or who because of their exceptional ability in the sciences, arts, or business will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States.

Statutory Basis

Section 203(b)(2)(A), (B), and (C) make provision for permanent positions for aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. The immigrant classification for this section of law is E21.

Regulatory
Basis

Title 8 Code of Federal Regulations, Part 204.5(k)(1), sets forth the standards applicable to the E21 classification.

Basis for
Qualification

There are several possible ways in which an alien may qualify under the E21 classification. They include:

- An alien with an Advanced Degree and an individual labor certification
- An alien with an Advanced Degree and a National Interest Waiver (NIW)
- An alien with Exceptional Ability and an individual labor certification
- An alien with Exceptional Ability with a blanket labor certification under Schedule A Group II
- An alien with Exceptional Ability and a NIW
- Physicians working in shortage areas and a NIW

I-LINK

Petitioner Requirements

The petitioner must submit evidence to establish that:

- the position must require an advanced degree or exceptional ability;
- the petitioner has the Ability to Pay the wage offered; and
- there is a valid job offer. There are three ways to establish the job offer. The petition must be accompanied by one of the following:
 - A Department of Labor Alien Employment Certification (Form ETA 750 Part A & B) which has been **certified** by the Department of Labor; **OR**
 - An **uncertified** ETA-750 (Part A & B in duplicate) that has been submitted as a blanket labor certification under Schedule A; **OR**
 - A completed ETA-750 Part B in duplicate if seeking an exemption of a job offer because an alien's employment would be in the national interest.

Beneficiary Requirements

The beneficiary must meet all of the requirements at the time the priority date is established.

Step	Action: U.S. CIS						
6.1	Review for general requirements. See Part 2 of this module for general requirements.						
6.2	<p>Review for petitioner requirements: Determine whether the petitioner has the ability to pay the proffered wage. See Addendum 2: Ability to Pay for instructions on determining a petitioner's ability to pay.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The petitioner has the ability to pay</td> <td>Go to Step 6.3</td> </tr> <tr> <td>The petitioner does not have the ability to pay</td> <td>Note the deficiency. Go to Step 6.3.</td> </tr> </tbody> </table>	IF...	THEN...	The petitioner has the ability to pay	Go to Step 6.3	The petitioner does not have the ability to pay	Note the deficiency. Go to Step 6.3.
IF...	THEN...						
The petitioner has the ability to pay	Go to Step 6.3						
The petitioner does not have the ability to pay	Note the deficiency. Go to Step 6.3.						
6.3	<p>Review Part A of the ETA-750 to determine that the position offered meets the requirements under the E21 classification. (See requirements below)</p> <p>Note: Aliens applying for the NIW need only present Part B of the ETA-750.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The position offered meets the requirements of E21</td> <td>Go to Step 6.4</td> </tr> <tr> <td>The position offered does NOT meet the requirements of E21</td> <td>Note the deficiency. Go to Step 6.4</td> </tr> </tbody> </table>	IF...	THEN...	The position offered meets the requirements of E21	Go to Step 6.4	The position offered does NOT meet the requirements of E21	Note the deficiency. Go to Step 6.4
IF...	THEN...						
The position offered meets the requirements of E21	Go to Step 6.4						
The position offered does NOT meet the requirements of E21	Note the deficiency. Go to Step 6.4						

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Advanced Degree Requirements

An advanced degree is defined as:

- a U.S. advanced degree or a foreign equivalent degree (Master's or Doctorate's Degree); or
- a U.S. baccalaureate degree or foreign equivalent degree, AND five years of progressive, post-baccalaureate experience.

Note: If a doctoral degree is customarily required by the specialty, the beneficiary must have a U.S. doctorate or a foreign equivalent degree [See 8 CFR 204.5(k)(2)].

Advanced Degree Equivalent

The key to making this determination is found on Form ETA-750, Part A. The job requirements contained in blocks 14 and 15 must be reviewed to determine whether the position requires an advanced degree professional. (See March 20, 2000 Policy Memo from Cronin on Bachelor's plus 5 years of experience)

Exceptional Ability

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

6.4	Review the individual ETA-750 to determine if it was certified by the DOL.										
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%; text-align: center;">IF...</th> <th style="width: 50%; text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td>The ETA 750 <u>has been</u> certified and the alien is applying as an advanced degree professional</td> <td>Go to Step 6.5 to review for advanced degree beneficiary qualifications.</td> </tr> <tr> <td>The ETA 750 <u>has been</u> certified and the alien is applying as an alien of exceptional ability</td> <td>Go to Step 6.5 to review for exceptional ability beneficiary qualifications.</td> </tr> <tr> <td>The ETA-750 <u>has not been</u> certified and the beneficiary is applying under Schedule A, Group II</td> <td>Go to Step C1 of Addendum 1: Labor Certifications to determine if the alien meets the requirements for the blanket waiver of the labor certification process.</td> </tr> <tr> <td>The petitioner submitted only Part B of the ETA-750, and is requesting exemption of the labor certification in the national interest (NIW)</td> <td>Go to Step 6.5 to determine if the alien is eligible as an advanced degree or an exceptional ability beneficiary.</td> </tr> </tbody> </table>	IF...	THEN...	The ETA 750 <u>has been</u> certified and the alien is applying as an advanced degree professional	Go to Step 6.5 to review for advanced degree beneficiary qualifications.	The ETA 750 <u>has been</u> certified and the alien is applying as an alien of exceptional ability	Go to Step 6.5 to review for exceptional ability beneficiary qualifications.	The ETA-750 <u>has not been</u> certified and the beneficiary is applying under Schedule A, Group II	Go to Step C1 of Addendum 1: Labor Certifications to determine if the alien meets the requirements for the blanket waiver of the labor certification process.	The petitioner submitted only Part B of the ETA-750, and is requesting exemption of the labor certification in the national interest (NIW)	Go to Step 6.5 to determine if the alien is eligible as an advanced degree or an exceptional ability beneficiary.
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The ETA 750 <u>has been</u> certified and the alien is applying as an advanced degree professional	Go to Step 6.5 to review for advanced degree beneficiary qualifications.										
The ETA 750 <u>has been</u> certified and the alien is applying as an alien of exceptional ability	Go to Step 6.5 to review for exceptional ability beneficiary qualifications.										
The ETA-750 <u>has not been</u> certified and the beneficiary is applying under Schedule A, Group II	Go to Step C1 of Addendum 1: Labor Certifications to determine if the alien meets the requirements for the blanket waiver of the labor certification process.										
The petitioner submitted only Part B of the ETA-750, and is requesting exemption of the labor certification in the national interest (NIW)	Go to Step 6.5 to determine if the alien is eligible as an advanced degree or an exceptional ability beneficiary.										

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6.5	<p style="text-align: center;">Review the petition to determine that the <u>beneficiary qualifies</u> under E-21 (see requirements below).</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">IF...</th> <th style="width: 50%; text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">The alien qualifies as an advanced degree professional with certified ETA-750</td> <td style="padding: 5px;">Go to Step 6.6</td> </tr> <tr> <td style="padding: 5px;">The alien qualifies as an advanced degree professional requesting exemption of labor certification (NIW)</td> <td style="padding: 5px;">Go to Addendum 1: Labor Certifications, Step E1.</td> </tr> <tr> <td style="padding: 5px;">If the alien qualifies as having exceptional ability with certified ETA-750</td> <td style="padding: 5px;">Go to Step 6.6.</td> </tr> <tr> <td style="padding: 5px;">The alien qualifies as having exceptional ability requesting exemption of labor certification (NIW)</td> <td style="padding: 5px;">Go to Addendum 1: Labor Certifications, Step E1.</td> </tr> <tr> <td style="padding: 5px;">The alien doesn't qualify under any of the categories</td> <td style="padding: 5px;">Note the deficiency and go to Step 6.6.</td> </tr> </tbody> </table>	IF...	THEN...	The alien qualifies as an advanced degree professional with certified ETA-750	Go to Step 6.6	The alien qualifies as an advanced degree professional requesting exemption of labor certification (NIW)	Go to Addendum 1: Labor Certifications, Step E1.	If the alien qualifies as having exceptional ability with certified ETA-750	Go to Step 6.6.	The alien qualifies as having exceptional ability requesting exemption of labor certification (NIW)	Go to Addendum 1: Labor Certifications, Step E1.	The alien doesn't qualify under any of the categories	Note the deficiency and go to Step 6.6.
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The alien qualifies as an advanced degree professional with certified ETA-750	Go to Step 6.6												
The alien qualifies as an advanced degree professional requesting exemption of labor certification (NIW)	Go to Addendum 1: Labor Certifications, Step E1.												
If the alien qualifies as having exceptional ability with certified ETA-750	Go to Step 6.6.												
The alien qualifies as having exceptional ability requesting exemption of labor certification (NIW)	Go to Addendum 1: Labor Certifications, Step E1.												
The alien doesn't qualify under any of the categories	Note the deficiency and go to Step 6.6.												

Advanced Degree Requirements

An advanced degree is defined as:

- a U.S. advanced degree or a foreign equivalent degree (Master's or Doctorate's Degree); or
- a U.S. baccalaureate degree or foreign equivalent degree, AND five years of progressive, post-baccalaureate experience.

Note: If a doctoral degree is customarily required by the specialty, the beneficiary must have a U.S. doctorate or a foreign equivalent degree [see 8 CFR 204.5(k)(2)].

Foreign Degree Equivalent

If the beneficiary's education has been obtained abroad, the petitioner must established that the beneficiary's foreign academic credentials are equivalent to education obtained at an accredited institution of higher learning in the United States.

Functional Equivalent Not Acceptable for Bachelor's Degree

If the Form ETA-750 indicates that entry into the position requires a specific degree, then the beneficiary must have the actual degree or its foreign equivalent. A "Functional equivalent" or equivalency based on a combination of education and experience is absolutely unacceptable for a bachelor's degree.

However, as stated in the regulations, a bachelor's degree or equivalent with five years of progressive post-baccalaureate experience may qualify as the equivalent of an advanced degree.

Post-Baccalaureate Progressive Experience

See the March 20, 2000, memo from Cronin on Bachelor's plus five years of experience: Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrant, Cronin, HQ 70/6.2.

Eligibility Requirements for Aliens of Exceptional Ability

Eligibility Requirements for Aliens of Exceptional Ability [8 CFR 204.5(k)(3)(i)]

In order to qualify as an alien of exceptional ability in the sciences, arts, and business under the U.S. CIS requirements, the individual must have three of the following six types of evidence:

1. An official academic record showing that the alien 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 letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation being sought;
3. A license to practice the profession or certification for a particular profession or occupation;
4. Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
5. Evidence of membership in professional associations; or
6. Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

6.6	<p>After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements as specified under the E21 classification.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="padding: 5px;">IF...</th> <th style="padding: 5px;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">The beneficiary qualifies under the E21 classification</td> <td style="padding: 5px;">Go to Step10a.1 and follow instructions for processing approvals.</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary qualifies under the E21 classification	Go to Step10a.1 and follow instructions for processing approvals.
IF...	THEN...				
The beneficiary qualifies under the E21 classification	Go to Step10a.1 and follow instructions for processing approvals.				

Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service	Go to Step 10b.1 and follow instructions for processing Intents to Deny.
Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification	Go to Step 10c.1 and follow instructions for processing Requests for Evidence.
The case involves an unusually complex or novel issue of law or fact	The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.
The beneficiary does not qualify under the E21 classification and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible	Go to Step 10e.1 and follow instructions for processing denials.

Adverse or Derogatory Information

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except when the petitioner or beneficiary is determined to be statutorily ineligible.

[8 CFR 103.2(b)(16)]

Part 7: E31-Skilled Workers

Introduction

The E31 “skilled workers” classification applies to any position that requires at least two years of education, training, or experience not of a temporary or seasonal nature for which qualified workers are not available in the United States.

Statutory Basis

Sections 203(b)(3) of the Act makes provision for permanent positions that are supported by Form ETA-750. The immigrant classification for this section of law is E31.

Regulatory Basis

Title 8, Code of Federal Regulations, Part 204.5(l), sets forth the standards applicable to the E31 classification.

I-LINK

Petitioner Requirements

The petition must establish:

- That the position requires at least two years of education, training, or experience;
- That the petitioner can demonstrate the ability to pay the wage offered on the ETA-750;
- That the petition is accompanied by a Department of Labor Alien Employment Certification (Form ETA 750 Part A & B) which has been **certified** by the Department of Labor; **OR** an **uncertified** ETA-750 that has been submitted as a blanket labor certification under Schedule A (in duplicate). [See 8 CFR 204.5(a)]

Note: A nonimmigrant cannot file on behalf of another alien. However, the fact that the person who signs the petition on behalf of a corporation or organization is a nonimmigrant does not prohibit the filing by the corporation or organization.

Beneficiary Requirements

The beneficiary must meet all of the requirements at the time the priority date is established.

Step	Action: U.S. CIS	
7.1	Review for general requirements. See Part 2 for general requirements.	
7.2	Review for petitioner requirements: Determine whether the petitioner has the ability to pay the proffered wage. See Addendum 2: Ability to Pay for instructions on determining a petitioner's ability to pay.	
	IF...	THEN...
	The petitioner has the ability to pay	Go to Step 7.3
	The petitioner does not have the ability to pay	Note the deficiency. Go to Step 7.3.
7.3	Petitioner requirements: Review the ETA-750 to determine whether the position requires at least two years of education, training, or experience as specified by E31 classification. This information can be found in Block # 14 of the ETA-750.	
	IF...	THEN...
	The position meets the requirements	Go to Step 7.4.
	The position does NOT meet the requirements	Note the deficiency. Go to Step 7.4.

7.4	<p>Review for beneficiary requirements. Determine whether the beneficiary has met all requirements as listed in Block #14 at the time the individual ETA-750 was originally filed with the DOL and all additional requirements as listed in Block #15 of the ETA-750.</p> <p>Note: See Addendum 3 for information on how to evaluate beneficiary's required training, education, experience, skills, or licensure.</p> <table border="1" data-bbox="386 426 1206 604"> <thead> <tr> <th data-bbox="386 426 797 464">IF...</th> <th data-bbox="797 426 1206 464">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 464 797 531">The beneficiary meets the requirements</td> <td data-bbox="797 464 1206 531">Go to Step 7.5</td> </tr> <tr> <td data-bbox="386 531 797 604">The beneficiary does NOT meet the requirements</td> <td data-bbox="797 531 1206 604">Note the deficiency. Go to Step 7.5</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary meets the requirements	Go to Step 7.5	The beneficiary does NOT meet the requirements	Note the deficiency. Go to Step 7.5		
IF...	THEN...								
The beneficiary meets the requirements	Go to Step 7.5								
The beneficiary does NOT meet the requirements	Note the deficiency. Go to Step 7.5								
7.5	<p>Make sure that the beneficiary on the I-140 matches the alien listed on the ETA-750 to ensure that the petitioner is not substituting a new alien for the one listed on the original labor certification (labor certification substitution).</p> <p>Also make sure that the petitioner on the I-140 is the same employer that is listed on the ETA-750 to ensure that the employer who filed the ETA-750 has not been bought out, merged, or had significant change in its ownership (successor in interest).</p> <table border="1" data-bbox="386 940 1206 1455"> <thead> <tr> <th data-bbox="386 940 797 978">IF...</th> <th data-bbox="797 940 1206 978">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 978 797 1146">The beneficiary on the ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match</td> <td data-bbox="797 978 1206 1146">Go to Step 7.6</td> </tr> <tr> <td data-bbox="386 1146 797 1314">The beneficiary on the ETA-750 and I-140 does NOT match</td> <td data-bbox="797 1146 1206 1314">Note the deficiency. See guidelines for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.</td> </tr> <tr> <td data-bbox="386 1314 797 1455">The petitioner on the I-140 and employer on the ETA-750 do NOT match</td> <td data-bbox="797 1314 1206 1455">Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary on the ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match	Go to Step 7.6	The beneficiary on the ETA-750 and I-140 does NOT match	Note the deficiency. See guidelines for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.	The petitioner on the I-140 and employer on the ETA-750 do NOT match	Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.
IF...	THEN...								
The beneficiary on the ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match	Go to Step 7.6								
The beneficiary on the ETA-750 and I-140 does NOT match	Note the deficiency. See guidelines for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.								
The petitioner on the I-140 and employer on the ETA-750 do NOT match	Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.								

7.6	<p>Review the ETA-750 to determine if it has been certified by the DOL. Review the endorsement field below Block #16 on the ETA-750 for the presence of an official authorized DOL stamp, which should appear with red, green and blue ink.</p> <table border="1" data-bbox="386 1665 1206 1770"> <thead> <tr> <th data-bbox="386 1665 716 1703">IF...</th> <th data-bbox="716 1665 1206 1703">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 1703 716 1770">The ETA-750 is certified by the DOL</td> <td data-bbox="716 1703 1206 1770">Go to Step 7.7</td> </tr> </tbody> </table>	IF...	THEN...	The ETA-750 is certified by the DOL	Go to Step 7.7
IF...	THEN...				
The ETA-750 is certified by the DOL	Go to Step 7.7				

<p>The ETA-750 has NOT been certified</p>	<p>Determine if they are applying for a blanket labor certification (Schedule A, Group I) as a nurse or physical therapist. If so, go to Step B1 in Addendum 1: Labor Certifications.</p> <p>Determine if they are applying for Special Handling as a Shepherder. If so, go to Step D1 in Addendum 1: Labor Certifications.</p> <p>If they are not applying under the blanket labor certification, note the deficiency. Go to Step 7.7.</p>
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<p>7.7</p>	<p>After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements as specified under the E31 classification.</p> <table border="1" data-bbox="386 877 1203 1623"> <thead> <tr> <th data-bbox="386 877 857 909">IF...</th> <th data-bbox="857 877 1203 909">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 909 857 1052"> <p>The petitioner has shown that the position requires a skilled worker and the beneficiary has met all requirements on the ETA-750</p> </td> <td data-bbox="857 909 1203 1052"> <p>Go to Step 10a.1 and follow instructions for processing approvals.</p> </td> </tr> <tr> <td data-bbox="386 1052 857 1184"> <p>Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service</p> </td> <td data-bbox="857 1052 1203 1184"> <p>Go to Step 10b.1 and follow instructions for processing Intents to Deny.</p> </td> </tr> <tr> <td data-bbox="386 1184 857 1388"> <p>Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification</p> </td> <td data-bbox="857 1184 1203 1388"> <p>Go to Step 10c.1 and follow instructions for processing Requests for Evidence.</p> </td> </tr> <tr> <td data-bbox="386 1388 857 1623"> <p>The case involves an unusually complex or novel issue of law or fact</p> </td> <td data-bbox="857 1388 1203 1623"> <p>The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.</p> </td> </tr> </tbody> </table>	IF...	THEN...	<p>The petitioner has shown that the position requires a skilled worker and the beneficiary has met all requirements on the ETA-750</p>	<p>Go to Step 10a.1 and follow instructions for processing approvals.</p>	<p>Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service</p>	<p>Go to Step 10b.1 and follow instructions for processing Intents to Deny.</p>	<p>Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification</p>	<p>Go to Step 10c.1 and follow instructions for processing Requests for Evidence.</p>	<p>The case involves an unusually complex or novel issue of law or fact</p>	<p>The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.</p>
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<p>The petitioner has shown that the position requires a skilled worker and the beneficiary has met all requirements on the ETA-750</p>	<p>Go to Step 10a.1 and follow instructions for processing approvals.</p>										
<p>Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service</p>	<p>Go to Step 10b.1 and follow instructions for processing Intents to Deny.</p>										
<p>Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification</p>	<p>Go to Step 10c.1 and follow instructions for processing Requests for Evidence.</p>										
<p>The case involves an unusually complex or novel issue of law or fact</p>	<p>The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.</p>										

7.7 (cont.)	<p>The petitioner has NOT shown that the position requires a skilled worker AND/OR the beneficiary has NOT met the requirements on the ETA-750 AND the opportunity to submit additional evidence has been afforded</p> <p>Note: If the petitioner has not shown that the position requires a skilled worker, the petition may be statutorily denied. If you are denying for this reason, you should also include any other deficiencies regarding the beneficiary.</p>	Go to Step 10e.1 and follow instructions for processing denials.
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Adverse or Derogatory Information

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except when the petitioner or beneficiary is determined to be statutorily ineligible.

[8 CFR 103.2(b)(16)]

Part 8: E32-Professionals

Introduction

The E32 "professional" classification means a qualified beneficiary who holds at least a U.S. baccalaureate degree or a foreign equivalent degree and who is a member of the professions.

Statutory Basis

Sections 203(b)(3) of the Act makes provision for permanent positions that are supported by Form ETA-750. The immigrant classification for this section of law is E32.

Regulatory Basis

Title 8, Code of Federal Regulations, Part 204.5(l), sets forth the standards applicable to the E32 classification.

Petitioner Requirements

The petition must establish all of the following:

- That the position requires at least a U.S. baccalaureate degree or a foreign equivalent degree and an individual who is a member of the professions;
- That the petitioner can demonstrate the ability to pay the wage offered on the ETA-750;
- That the petition is accompanied by a Department of Labor Alien Employment Certification (Form ETA 750 Part A & B) which has been **certified** by the Department of Labor; **OR** an **uncertified** ETA-750 that has been submitted as a blanket labor certification under Schedule A (in duplicate). [See 8 CFR 204.5(a)]

Note: If the ETA-750 specifies that the position requires a bachelor's degree or the equivalent and there is no provision noted on the ETA-750 for the acceptance of less than a bachelor's degree, the petition must be denied if the beneficiary does not hold such a degree. The beneficiary's education, training and experience equivalent to a degree are not sufficient.

Beneficiary Requirements

The beneficiary must meet all of the requirements at the time the priority date is established.

Step	Action: U.S. CIS						
8.1	Review for general requirements. See Part 2 for general requirements.						
8.2	<p>Review for petitioner requirements: Determine whether the petitioner has the ability to pay the proffered wage. See Addendum 2: Ability to Pay for instructions on determining ability to pay.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The petitioner has the ability to pay</td> <td>Go to Step 8.3</td> </tr> <tr> <td>The petitioner does not have the ability to pay</td> <td>Note the deficiency. Go to Step 8.3.</td> </tr> </tbody> </table>	IF...	THEN...	The petitioner has the ability to pay	Go to Step 8.3	The petitioner does not have the ability to pay	Note the deficiency. Go to Step 8.3.
IF...	THEN...						
The petitioner has the ability to pay	Go to Step 8.3						
The petitioner does not have the ability to pay	Note the deficiency. Go to Step 8.3.						
8.3	<p>Petitioner requirements: review the ETA-750 to determine whether the position requires at least a US baccalaureate degree or a foreign degree equivalent as specified by E32 classification. This information can be found in Block #14 of the ETA-750.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The position meets requirements</td> <td>Go to Step 8.4.</td> </tr> <tr> <td>The position does NOT meet requirements</td> <td>Note the deficiency. Go to Step 8.4.</td> </tr> </tbody> </table>	IF...	THEN...	The position meets requirements	Go to Step 8.4.	The position does NOT meet requirements	Note the deficiency. Go to Step 8.4.
IF...	THEN...						
The position meets requirements	Go to Step 8.4.						
The position does NOT meet requirements	Note the deficiency. Go to Step 8.4.						

8.4	<p>Review for beneficiary requirements: Determine whether the beneficiary has met all requirements as listed in Block #14 at the time the individual ETA-750 was originally filed with the DOL and any other requirements as listed in Block #15 of the ETA-750.</p> <p>See Addendum 3 for information on how to evaluate the beneficiary's required training, education, experience, skills, or licensure.</p> <table border="1" data-bbox="386 464 1208 638"> <thead> <tr> <th data-bbox="386 464 797 499">IF...</th> <th data-bbox="797 464 1208 499">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 499 797 569">The beneficiary meets the requirements</td> <td data-bbox="797 499 1208 569">Go to Step 8.5</td> </tr> <tr> <td data-bbox="386 569 797 638">The beneficiary does NOT meet the requirements</td> <td data-bbox="797 569 1208 638">Note the deficiency. Go to Step 8.5</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary meets the requirements	Go to Step 8.5	The beneficiary does NOT meet the requirements	Note the deficiency. Go to Step 8.5		
IF...	THEN...								
The beneficiary meets the requirements	Go to Step 8.5								
The beneficiary does NOT meet the requirements	Note the deficiency. Go to Step 8.5								
8.5	<p>Make sure that the beneficiary on the I-140 matches the alien listed on the ETA-750 to ensure that the petitioner is not substituting a new alien for the one listed on the original labor certification (labor certification substitution).</p> <p>Also make sure that the petitioner on the I-140 is the same employer that is listed on the ETA-750 to ensure that the employer who filed the ETA-750 has not been bought out, merged, or had significant change in its ownership.</p>								
8.5 (cont)	<table border="1" data-bbox="386 1016 1208 1493"> <thead> <tr> <th data-bbox="386 1016 797 1052">IF...</th> <th data-bbox="797 1016 1208 1052">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 1052 797 1188">The alien on the ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match</td> <td data-bbox="797 1052 1208 1188">Go to Step 8.6</td> </tr> <tr> <td data-bbox="386 1188 797 1356">The alien on the ETA-750 and I-140 does NOT match</td> <td data-bbox="797 1188 1208 1356">Note the deficiency. See guidelines for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.</td> </tr> <tr> <td data-bbox="386 1356 797 1493">The petitioner on the I-140 and employer on the ETA-750 do NOT match</td> <td data-bbox="797 1356 1208 1493">Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.</td> </tr> </tbody> </table>	IF...	THEN...	The alien on the ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match	Go to Step 8.6	The alien on the ETA-750 and I-140 does NOT match	Note the deficiency. See guidelines for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.	The petitioner on the I-140 and employer on the ETA-750 do NOT match	Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.
IF...	THEN...								
The alien on the ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match	Go to Step 8.6								
The alien on the ETA-750 and I-140 does NOT match	Note the deficiency. See guidelines for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.								
The petitioner on the I-140 and employer on the ETA-750 do NOT match	Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.								
8.6	<p>Review the ETA-750 to determine if it has been certified by the DOL. Review the endorsement field below Block #16 on ETA-750 for the presence of an official authorized DOL stamp which should appear with a red and blue ink.</p> <table border="1" data-bbox="386 1667 1208 1766"> <thead> <tr> <th data-bbox="386 1667 797 1703">IF...</th> <th data-bbox="797 1667 1208 1703">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 1703 797 1766">The ETA-750 is certified by the DOL</td> <td data-bbox="797 1703 1208 1766">Go to Step 8.7</td> </tr> </tbody> </table>	IF...	THEN...	The ETA-750 is certified by the DOL	Go to Step 8.7				
IF...	THEN...								
The ETA-750 is certified by the DOL	Go to Step 8.7								

<p>The ETA-750 has NOT been certified</p>	<p>Determine if they are applying as a nurse or physical therapist under a blanket labor certification (Schedule A, Group I). If so, go to Step B1, Addendum 1: Labor Certifications.</p> <p>If they are not applying under the blanket labor certification, Note the deficiency. Go to Step 8.7.</p>
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<p>8.7</p>	<p>After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements as specified under the E32 classification.</p> <table border="1"> <thead> <tr> <th data-bbox="386 808 797 842">IF...</th> <th data-bbox="797 808 1209 842">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 842 797 947"> <p>The beneficiary qualifies as a professional under E32</p> </td> <td data-bbox="797 842 1209 947"> <p>Go to Step 10a.1 and follow instructions for processing approvals.</p> </td> </tr> <tr> <td data-bbox="386 947 797 1083"> <p>Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service</p> </td> <td data-bbox="797 947 1209 1083"> <p>Go to Step 10b.1 and follow instructions for processing Intents to Deny.</p> </td> </tr> <tr> <td data-bbox="386 1083 797 1318"> <p>Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification</p> </td> <td data-bbox="797 1083 1209 1318"> <p>Go to Step 10c.1 and follow instructions for processing Requests for Evidence.</p> </td> </tr> <tr> <td data-bbox="386 1318 797 1486"> <p>The case involves an unusually complex or novel issue of law or fact</p> </td> <td data-bbox="797 1318 1209 1486"> <p>The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.</p> </td> </tr> <tr> <td data-bbox="386 1486 797 1692"> <p>The beneficiary does not qualify as a professional under E32 and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible</p> </td> <td data-bbox="797 1486 1209 1692"> <p>Go to Step 10e.1 and follow instructions for processing denials.</p> </td> </tr> </tbody> </table>	IF...	THEN...	<p>The beneficiary qualifies as a professional under E32</p>	<p>Go to Step 10a.1 and follow instructions for processing approvals.</p>	<p>Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service</p>	<p>Go to Step 10b.1 and follow instructions for processing Intents to Deny.</p>	<p>Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification</p>	<p>Go to Step 10c.1 and follow instructions for processing Requests for Evidence.</p>	<p>The case involves an unusually complex or novel issue of law or fact</p>	<p>The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.</p>	<p>The beneficiary does not qualify as a professional under E32 and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible</p>	<p>Go to Step 10e.1 and follow instructions for processing denials.</p>
IF...	THEN...												
<p>The beneficiary qualifies as a professional under E32</p>	<p>Go to Step 10a.1 and follow instructions for processing approvals.</p>												
<p>Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service</p>	<p>Go to Step 10b.1 and follow instructions for processing Intents to Deny.</p>												
<p>Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification</p>	<p>Go to Step 10c.1 and follow instructions for processing Requests for Evidence.</p>												
<p>The case involves an unusually complex or novel issue of law or fact</p>	<p>The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.</p>												
<p>The beneficiary does not qualify as a professional under E32 and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible</p>	<p>Go to Step 10e.1 and follow instructions for processing denials.</p>												

Adverse or Derogatory Information

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except when the petitioner or beneficiary is determined to be statutorily ineligible.

[8 CFR 103.2(b)(16)]

Part 9: EW3-Other Workers

Introduction

The EW3 “other worker” classification applies to any position that requires less than two years of work, training, or experience not of a temporary or seasonal nature, for which qualified workers are not available in the United State.

Statutory Basis

Sections 203(b)(3) of the Act makes provision for permanent positions that are supported by Form ETA-750. The immigrant classification for this section of law are EW3.

Regulatory Basis

Title 8, Code of Federal Regulations, Part 204.5(l), sets forth the standards applicable to the EW3 classification.

Petitioner Requirements

The petition must establish:

- That the position requires less than two years training or work experience;
- That the petitioner can demonstrate the ability to pay the wage offered on the ETA-750;
- That the petition is accompanied by a Department of Labor Alien Employment Certification (Form ETA 750 Part A & B) which has been **certified** by the Department of Labor; **OR** an **uncertified** ETA-750 that has been submitted as a blanket labor certification under Schedule A (in duplicate). [See 8 CFR 204.5(a)]

Beneficiary Requirements

The beneficiary must meet all the requirements at the time the priority date is established.

Step	Action: U.S. CIS	
9.1	Review for general requirements. See Part 2 for general requirements.	
9.2	Petitioner requirements: Determine whether the petitioner has the ability to pay the proffered wage. See Addendum 2: Ability to Pay for instructions on determining ability to pay.	
	IF...	THEN...
	The petitioner has the ability to pay	Go to Step 9.3
	The petitioner does not have the ability to pay	Note the deficiency. Go to Step 9.3.

9.3	<p>Petitioner requirements: Review the ETA-750 to determine what the position requires. Determine if the position requires less than two years of training or work experience as specified by EW3 classification. This information can be found in Block #14 of the ETA-750.</p> <table border="1"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">The position meets requirements</td> <td style="text-align: center;">Go to Step 9.4.</td> </tr> <tr> <td style="text-align: center;">The position does NOT meet requirements</td> <td style="text-align: center;">Note the deficiency. Go to Step 9.4.</td> </tr> </tbody> </table>	IF...	THEN...	The position meets requirements	Go to Step 9.4.	The position does NOT meet requirements	Note the deficiency. Go to Step 9.4.
IF...	THEN...						
The position meets requirements	Go to Step 9.4.						
The position does NOT meet requirements	Note the deficiency. Go to Step 9.4.						

9.4	<p>Review for beneficiary requirements. Determine whether the beneficiary has met the requirements as listed in Block #14 at the time the individual ETA-750 was originally filed with the DOL and that the beneficiary meets all other requirements as listed in Block #15 of the ETA-750. Note: See Addendum 3 for information on how to evaluate beneficiary required training, experience, skills, or licensure.</p> <table border="1"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">The beneficiary meets the requirements</td> <td style="text-align: center;">Go to Step 9.5</td> </tr> <tr> <td style="text-align: center;">The beneficiary does NOT meet the requirements</td> <td style="text-align: center;">Note the deficiency. Go to Step 9.5</td> </tr> </tbody> </table>	IF...	THEN...	The beneficiary meets the requirements	Go to Step 9.5	The beneficiary does NOT meet the requirements	Note the deficiency. Go to Step 9.5
IF...	THEN...						
The beneficiary meets the requirements	Go to Step 9.5						
The beneficiary does NOT meet the requirements	Note the deficiency. Go to Step 9.5						

9.5	<p>Make sure that beneficiary on the I-140 matches the alien listed on the ETA-750 to ensure that the petitioner is not substituting a new alien for the one listed on the original labor certification (labor certification substitution).</p> <p>Also make sure that petitioner on the I-140 is same employer that is listed on the ETA-750 to ensure that the employer who filed the ETA-750 has not been bought out, merged, or had significant change in its ownership (successor in interest).</p> <table border="1"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">The alien on ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match</td> <td style="text-align: center;">Go to Step 9.6</td> </tr> <tr> <td style="text-align: center;">The alien on ETA-750 and I-140 does NOT match</td> <td style="text-align: center;">Note the deficiency. See guideline for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.</td> </tr> <tr> <td style="text-align: center;">The petitioner on the I-140 and employer on the ETA-750 do NOT match</td> <td style="text-align: center;">Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.</td> </tr> </tbody> </table>	IF...	THEN...	The alien on ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match	Go to Step 9.6	The alien on ETA-750 and I-140 does NOT match	Note the deficiency. See guideline for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.	The petitioner on the I-140 and employer on the ETA-750 do NOT match	Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.
IF...	THEN...								
The alien on ETA-750 and I-140 match and the petitioner on the I-140 and employer on the ETA-750 match	Go to Step 9.6								
The alien on ETA-750 and I-140 does NOT match	Note the deficiency. See guideline for Labor Certification Substitutions in the Addendum 1: Labor Certifications, Part A.								
The petitioner on the I-140 and employer on the ETA-750 do NOT match	Note the deficiency. See guidelines for Successor In Interest in the Addendum 1: Labor Certifications, Part A.								

9.6	Review the ETA-750 to determine if it has been certified by the DOL. Review the endorsement field below Block #16 on the ETA-750 for the presence of an official authorized DOL stamp, which should appear with red, green and blue ink.	
	IF the ETA-750...	THEN...
	Is certified by the DOL	Go to Step 9.7
	Has NOT been certified	Determine if they are applying as a nurse or physical therapist under a blanket labor certification (Schedule A, Group I). If so, go to Step B1 in Addendum 1: Labor Certifications. If they are not applying under the blanket labor certification, note the deficiency. Go to step 9.7.

9.7	After reviewing and evaluating all requirements, determine whether the petitioner AND beneficiary have met all requirements as specified under the EW3 classification.	
	IF...	THEN...
	The beneficiary qualifies as an "other worker" under EW3	Go to Step 10a.1 and follow instructions for processing approvals.
	Adverse or derogatory information (see guidelines below) about the petitioner is made known to the Service	Go to Step 10b.1 and follow instructions for processing Intents to Deny.
	Additional evidence is required to make an adjudicative decision OR the beneficiary does not qualify under the selected classification but may qualify under another classification	Go to Step 10c.1 and follow instructions for processing Requests for Evidence.
	The case involves an unusually complex or novel issue of law or fact	The case may be certified as either approval or denial to AAO. Go to Step 10d.1 and follow instructions for processing a certification.
	The beneficiary does not qualify as an "other worker" under EW3 and has been afforded an opportunity to submit additional evidence, or is statutorily ineligible	Go to Step 10e.1 and follow instructions for processing denials.

Adverse or Derogatory Information

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except when the petitioner or beneficiary is determined to be statutorily ineligible.

[8 CFR 103.2(b)(16)]

Part 10: Post-Decision Processing

10a: Processing Approvals

Introduction

This section will describe various procedures that must be followed when the I-140 is to be approved.

Adjustment of Status vs. Consular Processing

Because the wording of the I-140 petition in Part 4 is confusing, the petitioner may not know what notations are needed to indicate a preference to adjust status or have the petition sent to a consulate. In addition, the beneficiary may wish to adjust status, but may be ineligible.

The record must be reviewed in order to choose the appropriate approval phrase and disposition of the petition after adjudication.

Policy

We will generally assume that the beneficiary wishes to adjust status if he or she is currently in the U.S. and has not referenced a foreign consulate in any of the documents submitted.

Adjustment of Status vs. Consular Visa Issuance

The following table describes the various methods used to determine whether the beneficiary wishes to:

- Adjust status in the U.S.; or
- Apply for an immigrant visa abroad.

IF...	THEN...
Part 4 of the I-140 petition <u>and/or</u> Part B of the labor certification show that the beneficiary has selected a consulate	The petition may be sent to NVC for forwarding to the consulate when a visa is available.
Part 3 of the I-140 states that the beneficiary is not in the U.S.	The petition may be sent to NVC for forwarding to the consulate when a visa is available.
Part 4 of the I-140 <u>and/or</u> in part B of the labor certification show that the beneficiary wishes to and is eligible to adjust status AND there is no pending related I-824 or I-485	The petition should be notated with "245" in the Consulate box above the approval stamp section and the petition sent to records for A-file creation.
Part 4 of the I-140 <u>and/or</u> in part B of the labor certification show that the beneficiary wishes to and is eligible to adjust status AND a relating I-485 is NOT pending, BUT an I-824 requesting consular notification is pending	The petition may be sent to NVC for forwarding to the consulate when a visa is available.

Part 4 of the I-140 <u>and/or</u> in part B of the labor certification show that the beneficiary wishes to and is eligible to adjust status AND a relating I-485 IS pending AND an I-824 requesting consular notification is pending	The petitioner will be afforded an opportunity to clarify the request pursuant to Policy Memo HQ 70/23.1.
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Note: The petitioner's statement, representative's cover letter and/or other acceptable notation or documentation, pursuant to local policy, may indicate the beneficiary's wishes.

Review the
Visa Bulletin

If the alien is eligible to adjust status, the visa bulletin for the current month must be reviewed to determine whether a visa is currently available. A visa would be available if, for the appropriate country and visa preference category, there is:

- A "C" indicating that visas are current; or
- The priority date of the petition falls before the date indicated under the area of chargeability.

Claims
Approval
Phrases

The following table describes the most commonly used I-140 approval phrases and when they should be used.

If the petitioner requests...	Then select...
Consular processing	"Requested send to consulate - sent to NVC"
Consular processing, and a cabled approval and a visa number is available within 30 days after the date of the approval	"Requested consulate; sent to NVC w/cable"
Adjustment of status, the beneficiary is eligible and a visa is currently available	"Indicated would adjust status; appears eligible now"
Adjustment of status, the beneficiary is eligible and a visa is NOT currently available	"Indicated would adjust status; not eligible now, not barred"
Adjustment of status and the beneficiary is clearly ineligible	"Indicated would adjust status, clearly ineligible"

Procedures for
Processing
Approvals

Follow the steps below to process an I-140 approval.

Step	Action: U.S. CIS
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10a.1	<p>Mark the box next to the appropriate section of law in the “Classification” block and annotate the petition with the classification code in the U.S. CIS USE ONLY section of the I-140 petition.</p> <p>Note: If the petition is being filed with a blanket labor certification, mark whether it was filed under Schedule A, Group I or Group II in the designated space on the I-140.</p>
10a.2	Write the priority date in the space marked “Priority Date” on the I-140 petition.
10a.3	See Part 4 of the I-140 petition to determine whether the alien would like to obtain his visa at the consulate or adjust status in the United States. Annotate on the petition (following local procedure) whether the case will be sent for consular (NVC) processing or adjustment of status (AOS).
10a.4	Stamp petition with the “approval” stamp in the appropriate space on the I-140 petition and sign the stamp.
10a.5	Remove the top, colored portion of the SWIP label to expose the transparent label below.
10a.6	Follow post-adjudications procedures.

10b: Processing Intents to Deny (ITD) or Intents to Revoke (ITR)

Procedures for Processing Intents to Deny (ITD) or Intents to Revoke (ITR)

Follow the steps below to process an I-140 Intent to Deny (ITD) or Intent to Revoke (ITR).

Note: When composing an ITD or ITR letter, make sure it contains a:

- Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met;
- Description of the specific reasons for the Service’s determination that the areas of eligibility have not been met; and
- Discussion of evidence that could be submitted to overcome the reasons for denial or revocation.

Step	Action: U.S. CIS
10b.1	Compose an Intent to Deny or Intent to Revoke letter, including all bases for denial or revocation, as applicable.
10b.2	Place a copy of the Intent to Deny or Intent to Revoke letter on top of the ROP.
10b.3	Follow post-adjudications procedures.

10c: Processing Requests for Evidence (RFE)

Procedures for Processing Requests for Evidence (RFE)

Follow the steps below to process a RFE.

Note: Keep in mind that pursuant to CSC 160/6, if the beneficiary did not qualify under the selected classification and you are offering an opportunity to change to a new classification before denying the case, you are not limited to using a RFE. The method can be via fax, email or phone.

I-LINK

Step	Action: U.S. CIS
10c.1	Compose a RFE letter, citing all noted deficiencies.
10c.2	Place copy of the RFE on top of the Record of Proceeding (ROP). Note: Once a decision is made, the RFE in the file should be placed with the other supporting documents below the petition.
10c.3	Follow post-adjudications procedures.

10d: Processing Administrative Appeals Officer (AAO) Certifications

Procedures for Processing Administrative Appeals Office Certifications Follow the steps below to process an I-140 AAO certification.

Step	Action
10d.1	Compose a decision, either denying or approving the petition, and certify the case to the AAO, using the form I-290C.
10d.2	Place the AAO certification letter on top of the ROP.
10d.3	Follow post-adjudications procedures.

10e: Processing Denials

Procedures for Processing Denials Follow the steps below to process an I-140 denial.

Note: When composing a denial letter, the letter should discuss ALL areas of eligibility that have not been met by the petitioner, and include a specific description of the reasons for the Service's determination that the areas of eligibility have not been met. The letter should also contain information about the appropriate appeal rights. Keep in mind that there are limited motion rights but no appeal rights for the following denial reasons:

- Request for withdrawal by the petitioner
- Abandonment denial
- Statutory ineligibility
- Refusal to provide an original document requested by the Service in order to verify a copy previously submitted [8 CFR 103.2(b)(5)]

Step	Action
<u>10e.1</u>	Compose a denial letter citing all bases for denial according to the local procedure.
<u>10e.2</u>	Annotate the "Action" block of the I-140 as "Denied."
<u>10e.3</u>	Once the denial letter is in the file, remove the top, colored portion of the SWIP label to expose the transparent label below.
<u>10e.4</u>	Follow post-adjudications procedures.

Part 11: Revocations

Revocations Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 8 CFR 205.1. [See 8 CFR 205.2(a)]

A petition may be revoked under Section 204.5(e) of the Act if the beneficiary, upon arrival at a port of entry in the U.S., is found to not be entitled to his or her visa classification.

A petition may be revoked at any time for good and sufficient cause under Section 205 of the Act. The revocation takes effect as of the date of the approval.

If the petition is revoked, the Service will notify the petitioner of its decision and explain in writing the specific reasons for revocation. [See 8 CFR 205.2(c)] If there has been Department of State involvement in the case, the consulate should be notified as well. If an I-140 is revoked, the concurrently filed I-485 should also be denied.

Automatic Revocations The approval of the I-140 petition is automatically revoked if:

- The Secretary of State terminates the registration of the beneficiary pursuant to either section 203(e) or 203(g) of the Act;
- The petitioner or representative submits written notice of withdrawal; or
- The employer’s business is terminated under section 203(b)(2) or (B)(3) of the Act.

[See 8 CFR 205.1(l)]

Procedures for Processing Revocations Follow the steps below to process an I-140 revocation.

Step	Action: U.S. CIS
11.1	Compose a revocation letter citing the basis for revocation.
11.2	Place and “X” across the approval stamp on the “Action” block of the I-140 and annotate the block with “Revoke.”
11.3	Follow CLAIMS updating procedures and outgoing mail procedures.

Part 12: References

Introduction This section will identify the resources that are available to provide guidance in the adjudication of Form I-140 petitions.

The Immigration and Nationality Act The Immigration and Nationality Act (INA) provides definitions of terms and the statutory basis for the employment-based classifications, in addition to the statutory basis for whom may file, the numerical limits of the class, procedures for granting status, and other eligibility considerations.

Reference	Issue
INA 203(b)(1)(A)	Aliens of Extraordinary Ability

INA 203(b)(1)(B)	Outstanding Professor and Researcher
INA 203(b)(2)(B)	National Interest Waiver
INA 203(b)(3)(A)(iii)	Defines the "Other Worker" immigrant category
INA 203(b)(3)(A)(i)	Defines the "Skilled Worker" immigrant category
INA 203(b)(3)(A)(ii)	Defines "Professional" immigrant category
INA 101(a)(32)	Defines Profession
INA 203(b)(2)(A)	Definition- Alien members of the profession holding an advanced degree
INA 203(b)(2)(C)	Definition- Alien with exceptional ability
INA 201(a)(2)	Employment-based Petitions
INA 201(d)	Numerical Limits on Employment-based Petitions
INA 204	Procedure for granting immigrant status
INA 204(c)	Fraudulent Marriage Prohibition
INA 205	Revocation of Approval of Petitions
INA 212(a)(5)(B)	Certain Foreign Medical School Graduates Examination Requirements
INA 245(i) and 245(k)	Adjustment of Status
INA 212(a)(5)(A)(iii), as added by IIRIRA 624	Labor certificates for professional athletes

8 CFR The Code of Federal Regulations (CFR), Volume 8, institutes eligibility requirements for the classifications, provides evidentiary guidelines, and governs other respective procedures.

Reference	Issue
8 CFR 204.2(a)(1)(ii)	Fraudulent Marriage Prohibition
8 CFR 204.5(a)	General, Proper Filing
8 CFR 204.5(b)	Jurisdiction-Service Centers
8 CFR 204.5(c)	Whom may file
8 CFR 204.5(d)	Priority Date
8 CFR 204.5(e)	Retention of Priority Date
8 CFR 204.5(f)	Maintaining Priority Date of 3rd or 6 th preference petition filed prior to October 1, 1991
8 CFR 204.5(g)	Initial Evidence-General
8 CFR 204.5(h)	Aliens of Extraordinary Ability
8 CFR 204.5(i)	Outstanding Professor and Researcher
8 CFR 204.5(l)(1)	General-Other Workers
8 CFR 204.5(l)(1)	General-Skilled Workers
8 CFR 204.5(l)(1)	General-Professional
8 CFR 204.5(l)(2)	Skilled Worker-Definition
8 CFR 204.5(l)(2)	Professional-Definition

8 CFR 204.5 (k)(1)	Alien member of the profession holding an advanced degree, or of exceptional ability-General
8 CFR 204.5(k)(2)	Definitions: Advanced Degree, Exceptional Ability, and Profession
8 CFR 204.5(l)(3)	Initial Evidence
8 CFR 204.5(l)(3)(i)	Labor Certification
8 CFR 204.5(l)(3)(ii)	Education, Experience and Training
8 CFR 204.5(l)(4)	Differentiating Between Skilled and Unskilled Category
8 CFR 205.1	Automatic Revocation
8 CFR 205.2(a), (b), and (c)	Revocation on Notice
8 CFR 205.2(d)	Appeal of Revocation

8 CFR, Cont.

Reference	Issue
8 CFR 103.2(b)(1)	Evidence and Processing-General
8 CFR 103.2(b)(5)	Requested original document to verify copy
8 CFR 103.2(b)(6)	Withdrawal of Petition/Application
8 CFR 103.2(b)(8)	Request for Evidence-Extensions of time not permitted
8 CFR 103.2(b)(11)	Submission of Evidence in response to request
8 CFR 103.2(b)(12)	Effect of decision when evidence submitted in response to Service request does not establish eligibility at the time of filing
8 CFR 103.2(b)(13)	Abandonment denial-failure to respond to request for evidence
8 CFR 103.2(b)(15)	Effect of Withdrawal or Denial Due to Abandonment
8 CFR 103.3	Denials, Appeals and Precedent Decisions
8 CFR 103.5(a)	Reopening or Reconsideration
8 CFR 103.7(b)	Filing Fees

Precedent Decisions

Precedent decisions are decisions from our appellate authorities that are binding on the Service. Many of the issues discussed in these precedent decisions have been incorporated into regulation. Precedent decisions provide assistance in understanding how the law has developed over the years, and insight into the manner in which evidence is to be interpreted during the adjudication process.

Precedent Decision	Issue
<u>Matter of Frank</u> , 11 I&N Dec. 657 (District Dir. 1966)	Defines exceptional ability as something more than what is usual, ordinary, or common, and requires some rare or unusual talent.
<u>Matter of Tagawa</u> , 13 I&N Dec. 13 (District Dir. 1967)	Distinguishes exceptional ability in the arts and in the sciences

<p><u>Matter of Asuncion</u>, 11 I&N Dec. 660 (Reg. Comm. 1967)</p>	<p>States in essence that an examination of the occupations named in section 101(a)(32) of the Act indicates the following characteristics are common to all:</p> <ul style="list-style-type: none"> • Recognition as a member of a profession normally requires a successful completion of a specific course of education on the college or university level culminating in the attainment of a specific type of degree [Bachelor's]; and • The attainment of such a degree [Bachelor's] is usually the minimum requirement for entry into those occupations.
<p><u>Matter of Shin</u>, 11 I&N Dec. 686 (District Dir. 1966)</p>	<p>Defines "profession" as an advanced type of knowledge in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into a particular field of endeavor.</p>

<p><u>Matter of Ling</u> 13 I&N Dec. 35 (Reg. Comm. 1968)</p>	<p>Further defines "profession."</p>
<p><u>Matter of Portuguese DO Atlantico Information Bureau, Inc.</u> 19 I&N Dec. 194 (Comm. 1984)</p>	<p>The claim that experience is the same as or generally can be substituted for the normal educational requirements of a professional position is erroneous. Individuals lacking the normal educational prerequisites may be classified as professional in only rare instances; a professional position is one that requires a standard and at least Baccalaureate level of university education for practice.</p>
<p><u>Matter of Treasure Craft of California</u>, 14 I&N Dec. 190 (Reg. Comm. 1972)</p>	<p>The Service need not accept statements without supporting evidence.</p>
<p><u>Matter of Obaigbena</u>, 19 I&N Dec. 533 (BIA 1988)</p>	<p>The assertions of counsel do not constitute evidence.</p>
<p><u>Matter of Ramirez-Sanchez</u>, 17 I&N Dec. 503 (BIA 1980)</p>	<p>The assertions of counsel do not constitute evidence.</p>
<p><u>Matter of Sunoco Energy Development Co.</u>, 17 I&N Dec. 283 (BIA 1979)</p>	<p>Labor certification involving a specific job offer is valid only for the particular job opportunity and for the area of intended employment stated on the labor certification form.</p>

<u>Matter of Harry Bailen Builders, Inc.</u> , 19 I&N Dec. 412 (BIA 1986)	Labor certification applies only to a specific job offer. When the job offer is filled by using the labor certification, the job offer ceases to exist. The labor certification cannot be restored, once the alien has been admitted as an LPR.
<u>Matter of Brantigan</u> , 11 I&N Dec. 493 (BIA 1966)	Burden of proof in establishing eligibility for benefit sought rests with the petitioner.
<u>Matter of Church of Scientology International</u> , 19 I&N Dec. 593 (BIA 1988)	A person seeking a schedule A, Group IV, labor certificate must meet all eligibility requirements for "L-1" classification as a manager or executive, including those relating to a qualifying relationship (ownership and control are the factors to be established here) between the entities for which the person has been and would be employed. This Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals, which may have been erroneous.
<u>Matter of Siemens Medical Systems, Inc.</u> , 19 I&N Dec. 362 (BIA 1986)(in nonimmigrant visa proceedings)	Unless agreements exist to the contrary, 50% control relating to voting of the shares, distribution of profits, management and direction of the subsidiary, and similar factors that affect actual control of over 50% of the subsidiary, will be deemed per se control. These factors must be identified.
<u>Matter of Hughes</u> , 18 I&N Dec. 289 (Comm. 1982)(in nonimmigrant visa proceedings)]	An affiliation exists between two companies when the petitioning company: has a 50% financial interest in the foreign company, has de facto control over the foreign company, and the foreign company exists solely to sell the petitioner's product. Ownership need not be a majority if control exists.
<u>Matter of Ho</u> , 19 I&N Dec. 582 (BIA 1988)	It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.
<u>Matter of M</u> , 8 I&N Dec. 24 (BIA 1958)	The beneficiary may sign the petition as a legal representative if he or she is an officer of the corporation.

<u>Matter of Aphrodite Investments, Ltd.</u> , 17 I&N Dec. 530 (Comm. 1980)	The beneficiary may sign the petition as a legal representative if he or she is an officer of the corporation.
<u>Matter of Tessel</u> , 17 I&N Dec. 631 (Act. Assoc. Comm. 1980)	The beneficiary may sign the petition as a legal representative if he or she is an officer of the corporation.
<u>Kooritzky v. Reich</u> , 17 F.3d 1509 (D.C. Cir. 1994)	Court order permits employers to request substitution of beneficiaries on labor certifications

U.S. CIS Policy Memos Policy memos provide finer procedural guidance on issues that require clarification, or offer additional guidance on changes. This form of guidance can be issued from Headquarters or from within the Service Center.

Reference	Issue
Office of Field Operations, HQ 70/6.2.8, 06/19/01	Change of Employment Permitted in Cases of Lengthy Adjustment Adjudication
Office of Policy and Planning, HQ 70/23.1, 08/08/00	Submission of an Application for Action on an Approved Application or Petition, Form I-824, When It Relates to a Visa Petition or an Application for Adjustment of Status
Memo from Mike Aytes, HQ 70/8	All EW3 petitions must be sent to NVC without regard to the wishes of the beneficiary or whether the visa is available.
Center Operations, HQ 70/8	Changes in Processing of Forms I-140 for Unskilled Workers
Office of Examinations, 02/11/97	Validity of Employment-based Petitions Filed on Behalf of Athletes
U.S. CIS Office of Examinations, 03/07/96	Substitution of Labor Certification Beneficiaries, U.S. CIS Office of Examinations
U.S. CIS Office of Programs, 04/04/95	Priority Dates for Employment-based Petitions
U.S. CIS Office of Programs, 09/06/94	Immigration of Foreign Medical School Graduates

I-LINK

U.S. CIS Office of Operations, 10/26/93	Improper I-140 visa petitions based on previously used alien labor certifications - An individual labor certification which has been used to obtain an employment-based immigrant visa cannot be revived to support a subsequent immigrant petition, even with the same employer.
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U.S. CIS Office of Examinations, 04/28/92	I-140 Issues
Memo from Michael Cronin, HQ 70/6.2, 03/20/00	Advanced degree equivalent, post-baccalaureate progressive experience, and bachelor's plus five years of experience
Office of Field Operations, HQ 70/6.1.3-P, 10/01/01	Accepting adjustment of status applications from alien physicians fulfilling a 3-year medical service requirement in H-1B status
Memo from Donald Neufeld, CSC 70/6, 09/18/01	Offering certain petitioners the opportunity to change their requested classification if the beneficiary did not qualify for the selected one but may qualify for another

Department of Labor Regulations and Policy Memos

The Code of Federal Regulations, Volume 20, pertains to the activities of the Department of Labor. These regulations govern the issuance of labor certification and provide the Service with the authority to invalidate an Application for Labor Certification if there exists evidence of fraud or willful misrepresentation of a material fact in the labor certification application.

In addition, DOL policy memos provide procedural guidance regarding agreements which DOL and U.S. CIS have entered into with regard to amending labor certifications and processing requests for substitution of beneficiaries on labor certifications.

Reference	Issue
20 CFR 656.20(d)(1)	Certain Foreign Medical School Graduates Examination Requirements
20 CFR 656.21	Specifies procedures for filing the Form ETA-750, labor certification
20 CFR 656.30(d) and 20 CFR 656.31(d)	Permits U.S. CIS to invalidate labor certifications if fraud and/or willful misrepresentation of a material fact is involved in the labor certification application
20 CFR 656.10	Defines Schedule A
20 CFR 656.20	General filing instructions and adjudication procedures for labor certifications, to include a prevailing wage determination pursuant to 20 CFR 656.40
20 CFR 656.22	Special filing instructions for Schedule A positions; requires " <i>immigration officers</i> " to determine that all parts of 20 CFR 656.20 are met

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20 CFR 656.40	Determination of the prevailing wage for labor certification purposes.
DOL Field Memo No. 37-95	Authorizes the Service to process labor certification substitution requests
DOL Field Memo No. 28-96	Final Procedures for Substituting Alien Beneficiaries on Approved Labor Certifications
DOL Field Memorandum 47-92	Authorizes U.S. CIS to make minor corrections to the Alien Labor Certification (ETA-750) which relate only to the name and address of the employer

Addendum

Addendum 1: Labor Certifications

Introduction One important goal of the immigration laws is to ensure that employment-based immigration does not adversely affect the wages and working conditions of citizens and resident aliens already in the United States. For this reason, most E21 immigrants, and all E31, E32 and EW3 immigrants, even if qualified for the position, cannot immigrate unless the Secretary of Labor certifies that there is a shortage of qualified potential employees.

There are two basic labor certification methods, individual and blanket. For an **individual labor certification**, the prospective employer must formally apply through the Department of Labor (DOL) with the Form ETA-750. The prospective employer must take steps to attempt to fill the position with someone willing and able to work in the United States. If there is no willing, able and qualified U.S. employee, then the Department of Labor approves the labor certification.

For **blanket labor certification (Schedule A)**, the DOL has established that there is a nation-wide shortage of qualified U.S. workers, which include registered nurses, physical therapists, and aliens of exceptional ability under Schedule A.

There is another group that is not included in Schedule A that is designated for **special handling**. A sheepherder who has been working in a valid nonimmigrant status as a sheepherder for 33 of the last 36 months is not required to obtain a labor certification from DOL.

Finally, if the petitioner can demonstrate that a **waiver** of the labor certification process is **in the national interest**, then a labor certification is not needed for an E21 immigrant petition.

Description This document outlines the various methods and exceptions for labor certification.

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Part E: National Interest Waiver-----	5-128

Part A: Individual Labor Certifications

Individual Labor Certifications For an **individual labor certification**, the prospective employer must formally apply through the Department of Labor with the Form ETA-750. The prospective employer must take steps to attempt to fill the position with someone willing and able to work in the United States. If there is no willing, able and qualified U.S. employee, then the Department of Labor approves the labor certification. The individual labor certification must be approved by DOL prior to the filing of the I-140 petition.

Lost Original Labor Certifications When adjudicating I-140 petitions that require a DOL certified ETA-750, the record should contain the original labor certification. See 8 CFR 204.5(g)(1).

The purpose of obtaining the original ETA-750 is to ensure that no other aliens have already immigrated using that original ETA-750. However, the original labor certification may only be necessary in some cases if discrepancies are found in the copies of the ETA-750.

Some instances when an original ETA-750 may be required include cases where a petitioner files a petition:

- for a different classification (E21, E31, and E32) for the same beneficiary;
- to request a new alien be “substituted” for the alien listed on the original certified ETA-750;
- to establish it is a “successor in interest;”
- requesting a name change for the petitioner; or
- requesting a location change for the petitioner (within the same Standard Metropolitan Statistical Area).

Lost Original
Labor
Certifications,
Cont.

Before attempting to obtain the previous I-140 with the original ETA-750, the first thing to determine is that the original beneficiary has not already immigrated using the original ETA-750 – especially in older cases.

Check CIS to verify that the ETA-750 has not been used to obtain a visa for the original beneficiary. If it has, then the current I-140 needs a new ETA-750 certified by the Department of Labor. If no record can be located to establish that the original alien immigrated using the original ETA-750, then a thorough search for the originally-approved I-140 and accompanying original ETA-750 must be performed and the record obtained.

A thorough search would include contacting the NVC, Consulate, AAO, or File Control Office that is holding the case. Basically, you must attempt to retrieve the original or, in some cases, a copy of I-140 and ETA-750 from those offices in order to verify the validity of the copy of the ETA-750 that is in the current record. If the original ETA-750 cannot be located or is lost, the office that held the case last should send a fax stating that the file is lost.

If the original ETA-750 and approved I-140 is located and received, consolidate them with the new I-140. For those cases where the petitioner has filed under multiple classifications (E21, E31, E32) for the same beneficiary, place the original ETA-750 in the I-140 with the most current visa availability date. The copies of the “shared” ETA-750 in the other files are “certified” by the adjudicator as copies of the original and notated with the receipt number of the I-140 where the original ETA-750 is located. Likewise, the original ETA-750 is notated with the receipt file number for each file containing a certified copy.

Note: If the petitioner previously requested an adjustment of status but is now asking for “consulate notification” on the new I-140, then request that the beneficiary withdraw his request to adjust status in the United States, Form I-485 (if there is one – check CLAIMS), before you adjudicate the new I-140.

Duplicate
Labor
Certifications

A petitioner may request that U.S. CIS obtain a duplicate certification from the Department of Labor as the Department of Labor will not issue a duplicate certification directly to the petitioner. If the labor certification was certified more than five years ago, the Department of Labor will not issue a duplicate certification. Follow local policy for obtaining a duplicate labor certification.

Labor
Certification
Substitutions

On occasion, employers will request that a new alien be substituted for the alien listed on a certified ETA-750. The priority date for a petition that is supported by a labor certification substitution is the earliest date the certification was accepted for processing by the DOL. Labor certification substitutions are allowed ONLY if that certified ETA-750 has not been used by a prior beneficiary to obtain an immigrant visa.

The new beneficiary must have met all of the minimum education, training, or experience requirements as stated in Part A of the original ETA-750 at the time the original labor certification application was submitted to the state employment office.

A new form ETA-750, Part B signed by the substituted alien must be included with the petition.

Additionally a written notice of withdrawal of the approved Form I-140 initially submitted for the original beneficiary must be included, as well as a photocopy of the form I-797 approval notice, if available.

Successor in Interest

On March 17, 1992, through an agreement with the Department of Labor, it was decided that the Service would make determinations on successor in interest I-140 petitions. On December 10, 1993, James A. Puleo, Acting Executive Associate Commissioner, through the Office of Operations, sent a memorandum to the field that provided additional information on how successor in interest and other cases should be handled. The following is a synopsis of that memo.

If the business that initiated the original request for labor certification has been bought out, merged, or had a significant change in its ownership, the new business, the "successor in interest," must file a new I-140 petition.

In Matter of Dial Auto Repair Shop, Inc., 19 I&N Dec. 481 (Comm. 1981) it was determined that the successor in interest has the burden of proof to establish that it has assumed all of the rights, duties, obligations, and assets of the original employer. Additionally, the successor in interest must continue to operate the same type of business as the original employer. Finally, the new business must establish that it has the ability to pay.

In order for a "successor in interest" determination to be made, the following documentation should be submitted along with the new I-140 petition: a copy of the notice of approval for the initial Form I-140; a copy of the labor certification submitted with the initial Form I-140; documentation to establish the ability to pay the proffered wage - evidence of this ability must be either in the form of copies of annual reports, federal tax returns, or audited financial statements; a fully executed uncertified labor certification (Form ETA 750, Parts A & B) completed by the petitioner; documentation to show how the change of ownership occurred: buyout, merger, etc.; and documentation to show the petitioner will assume all rights, duties, obligations, and assets of the original employer.

Successor in interest must:

- 1) Establish that it has assumed all of the rights, duties, obligations, and assets of the original employer.
- 2) Continue to operate the same type of business as the original employer.
- 3) Establish that the new business has the ability to pay as of the priority date.

Professional Athletes

Section 624 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amended section 212(a)(5)(A) of the INA to make special provision for Form I-140 petitions that are filed on behalf of professional athletes. A labor certification or an approved Form I-140 remains valid with respect to a professional athlete after the athlete changes employers if:

The new employer is a team in the same sport as the team that filed the labor certification and/or Form I-140. [See memo dated February 11, 1997 HQ70/8.4 Office of Examinations]

If the DOL has approved a labor certification on behalf of a professional athlete and the petitioning employer has not yet filed the Form I-140; the new employer in the same sport may file the Form I-140. The new employer must establish that:

- An employment relationship exists with the athlete; and
- The employer is a team within the same sport as the team that filed the labor certification.

If the Form I-140 is pending at the Service Center and the athlete changes teams, the new team must:

- Notify this Service; and
- Submit documentary evidence that supports the claim, such as a contract.

The Service center will then contact the employer that filed the original I-140, and verify that the initial employer no longer wishes to employ the beneficiary. If verified, the Service will amend the petition to reflect the new employer. In this instance, the petition should be brought to a business SCAO, who will make the contact.

Part B: Blanket Labor Certifications – Schedule A, Group I

Introduction

United States employer may file a Form I-140 petition on behalf of an alien beneficiary requesting Schedule A, Group I blanket labor certification.

The Director, United States Employment Service (Director), Department of Labor, has determined that there are no sufficient United States workers who are able, willing, qualified, and available for the occupations listed on Schedule A and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in Schedule A occupations. An alien seeking a labor certification for an occupation listed on Schedule A may apply for that labor certification pursuant to 20 CFR 656.22.

Statutory Basis for Schedule A, Group I

Section 203(b)(2), (3)(A)(i) and (ii) of the Act make provision for Schedule A Group I blanket labor certifications for permanent positions in the registered nurse or physical therapist occupations. The immigrant classifications for these three sections of law are E21, E31 and E32, respectively.

Regulatory Basis for Schedule A, Group I The position being offered to the beneficiary by the petitioner must be a permanent **registered nurse** or **physical therapist** position. [See 20 CFR 656.10(a)]

General Eligibility Requirements The petition must be properly filed by a United States employer who intends to permanently employ the beneficiary, and must be supported by:

- Evidence that the position offered is for a nurse or a physical therapist; • Evidence that the beneficiary has the required licensure or Commission on Graduate of Foreign Nursing Schools (CGFNS) certificate (nurses only);
- Evidence of notice of posting; and
- A fully executed DOL Form ETA-750, Application for Alien Employment Certification (Part A and B), in duplicate.

All of these requirements must be met as of the date of filing of the petition.

Form ETA-750 (Uncertified) Part A of the Form ETA-750 outlines all of the education, training or work experience that the petition requires for the position offered, as well as the wage to be paid to the beneficiary.

Part B of the Form ETA-750 outlines the beneficiary's education, training and work experience. The petition must include a fully executed Form ETA-750, in duplicate. [See 8 CFR 204.5(l)(3)(i) and 20 CFR 656.22(a)]

The Form ETA-750 will indicate whether the position offered is for a registered nurse or physical therapist.

Prearranged Employment The petitioner must provide evidence of prearranged employment for the beneficiary, which is met by the petitioner when the job offer description portion in Part A of the Form ETA-750 is signed and completed. [See 20 CFR 656.22(b)(1)]

Registered Nurse Positions do not Usually Qualify for the E32 Classification Registered nurses are considered members of the professions [Matter of Guttierrez, 12 I&N Dec. 418 (D.D. 1967)]. However, a registered nurse who has a bachelor's degree would not normally qualify for E32 classification because a bachelor's degree is not the minimum entry-level qualification for the occupation. [8 CFR 204.5 (l)(ii)(C)]

Step	Action				
B1	Look for evidence that the notice of posting has been properly documented (see guidelines below).				
	<table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>There is evidence of proper notice of posting</td> <td>Go to Step B2.</td> </tr> </tbody> </table>	IF...	THEN...	There is evidence of proper notice of posting	Go to Step B2.
IF...	THEN...				
There is evidence of proper notice of posting	Go to Step B2.				

	There is NOT evidence of proper notice of posting	Note the deficiency. For E31, go to Step 7.7. For E32, go to Step 8.7.
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Notice of Posting A notice of posting is the document used to notify qualified U.S. workers in the area of intended employment that the petition has been filed.

Notice must be provided to the petitioner's employees in the intended area of employment or the employees' bargaining unit representatives as of the date of filing. [See 20 CFR 656.22(b)(2)]

Determining Notice of Posting Acceptability The format and contents of the notice of posting, as well as where the notice was posted must be evaluated by the officer. This table describes the required format and contents for a notice of posting.

If the employees in the area of intended employment...	Then the format is...	And will include...
Have bargaining unit representatives	A letter from the petitioner to the bargaining unit representatives	-Date of posting (duration of at least 10 consecutive days) -Location of posting -Occupation -Petitioner's name -Location of position
Do not have bargaining unit representatives	The actual job offer notice that was posted	

Area of Intended Employment This table identifies the location where the notice is to be posted.

If the petitioner will be...	Then the notice will be posted at the location of the...
Directly utilizing the beneficiary's services	Petitioner's main place of business, or its business location in the area of intended employment.
Contracting out the beneficiary's services to other organizations	Petitioning employer/contractor, not at the actual work site.

Step	Action						
B2	Review the documentation to see if the alien qualifies as a registered nurse or physical therapist under Schedule A, Group I (see requirements below). <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The alien qualifies for the blanket waiver and all other requirements</td> <td>Go to Step B3.</td> </tr> <tr> <td>The alien does not qualify for the blanket waiver.</td> <td>Note the deficiency. For E31, go to Step 7.7. For E32, go to Step 8.7.</td> </tr> </tbody> </table>	IF...	THEN...	The alien qualifies for the blanket waiver and all other requirements	Go to Step B3.	The alien does not qualify for the blanket waiver.	Note the deficiency. For E31, go to Step 7.7. For E32, go to Step 8.7.
IF...	THEN...						
The alien qualifies for the blanket waiver and all other requirements	Go to Step B3.						
The alien does not qualify for the blanket waiver.	Note the deficiency. For E31, go to Step 7.7. For E32, go to Step 8.7.						

I-LINK

Registered Nurse Occupation	The officer must review the Form ETA-750 and other supporting documentation to verify that the nursing position offered qualifies as one in the registered nurse occupation.
Registered Nurse Definition	<p>Registered Nurses care for the sick and injured and help people stay well. They are typically concerned with the whole person, providing for the physical, mental, and emotional needs of their patient, and typically:</p> <ul style="list-style-type: none"> • Observe, assess, and record symptoms, reactions and progress; • Assist physicians during treatment and examination, and administer medications; • Assist in convalescence and rehabilitation; • Develop and manage nursing care plans; • Instruct patients and their families in proper care; and • Help individuals and groups take steps to improve or maintain their health. <p>While state law governs the tasks RNs may perform, it is usually the work setting, which determines their day-to-day job duties. [See Occupational Outlook Handbook]</p>
Registered Nurse Definition, Cont.	<p>DOL 20 C.F.R. 656.10 defines a professional nurse under Schedule A Group I. In the definition, professional nurse includes listing from Occupational Group No. 075 of the Dictionary of Occupational Title (4th ed.).</p> <p>Note: A certified nurse’s assistant (CNA), licensed vocational nurse (LVN), licensed practical nurse (LPN), or nurse’s aide does not qualify.</p> <p>[See <i>Occupational Outlook Handbook</i> (OOH) definition for “Registered Nurse”] [See: DOL 20 C.F.R. 656.3 for comprehensive definitions for purpose of terms used in this section.]</p>
Registered Nurse Evidence of Licensure	<p>In order to qualify as a Schedule A, Group I registered nurse, the petitioner must show that as if the date of filing the beneficiary:</p> <ul style="list-style-type: none"> • Has passed the CGFNS Examination; or • Possesses a full and unrestricted license to practice nursing in the state of intended employment. <p>[See 20 CFR 656.10(a)(2) and 20 CFR 656.22(c)(2)]</p>
Physical Therapist Occupation	The officer must review the Form ETA-750 and other supporting documentation to verify that the therapist position offered qualifies as one in the physical therapist occupation.

Physical
Therapist
Definition

A physical therapist is a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function, and maintain performance, using physical means as prescribed by a physician (or surgeon), such as:

- exercise
- massage
- heat
- water
- light
- electricity

Note: Occupational therapists do not qualify.
[See 20 CFR 656.10(a)(3)(i)]

Physical
Therapist
Evidence of
Licensure

In order to qualify as a Schedule A, Group I physical therapist, the petitioner must show that as of the date of filing the beneficiary:

- has a full and unrestricted license to practice physical therapy in the state of intended employment; or
- is qualified to take the written licensing examination for physical therapists in the State of intended employment.

[See 20 CFR 656.10(a)(1) and 20 CFR 656.22(c)(1)]

Step	Action
B3	Certify the ETA-750 at the bottom of Part B (see guidelines below). Go to Step 7.7 for E31 or go to Step 8.7 for E32.

How to Certify
(Endorse) a
Labor
Certification for
Schedule A

20 CFR 656.22(f) states that:

“If aliens and the employer(s) have met the requirements of this paragraph (b), the Immigration or Consular Officer shall indicate on the Application for Alien Employment Certification form the occupation, the immigration or consular office which made the determination pursuant to this paragraph (b), and the date of the determination (see 20 CFR 656.30 of this part for the significance of this date). The Immigration or Consular Officer shall forward promptly to the Director copies of the Application of Alien Employment Certification form, without the attachments.”

It suggested that the “Endorsements” field at the bottom of Part B of both copies of the ETA-750, Application for Alien Employment Certification, be completed as follows:

Schedule A Group I
Registered Nurse (or Physical Therapist)
Officer’s Stamp Number & Date of Adjudication

Forward copy of the certified ETA-750 to:

Department of Labor-ETA
Room C-4318
200 Constitution Ave, NW
Washington, DC 20210

Part C: Blanket Labor Certifications – Schedule A, Group II

Introduction

United States employer may file a Form I-140 petition on behalf of an alien beneficiary requesting Schedule A Group II blanket labor certification.

The Director, United States Employment Service (Director), Department of Labor, has determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed on Schedule A and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in Schedule A occupations. An alien seeking a labor certification for an occupation listed on Schedule A may apply for that labor certification pursuant to 20 CFR 656.22.

**Statutory
Basis for
Schedule A,
Group II**

Section 203(b)(2), (3)(A)(i) and (ii) of the Act make provision for Schedule A Group II blanket labor certifications for permanent positions in the registered nurse or physical therapist occupations, and may also include aliens of exceptional ability. The immigrant classifications for these three sections of law are E21, E31 and E32, respectively.

I-LINK

Regulatory Basis for Schedule A, Group II The position being offered to the beneficiary by the petitioner must be offered to an alien of exceptional ability (except aliens in the performing arts). [See 20 CFR 656.10(b) and 656.22(d)]

General Eligibility Requirements Alien must demonstrate exceptional ability in the sciences or arts (except for aliens in the performing arts) including college and university teachers of exceptional ability who intend to practice the same science or art in the United States. For the purposes of this group, the term “science or art” means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. The alien must demonstrate:

- Current, widespread acclaim and international recognition from recognized experts in his/her field;
- Evidence that their work in the field during the past year did, and that their intended work in the U.S. will, require exceptional ability; and
- Fully executed DOL Form ETA-750, Application for Alien Employment Certification (Part A and B), in duplicate.

Note: An alien need not have studied at a college or university in order to qualify for the Group II occupation.

Form ETA-750 (Uncertified) Part A of the Form ETA-750 outlines all of the education, training or work experience that the petition requires for the position offered, as well as the wage to be paid to the beneficiary.

Part B of the Form ETA-750 outlines the beneficiary’s education, training and work experience. The petition must include a fully-executed Form ETA-750, in duplicate. [See 8 CFR 204.5(l)(3)(i) and 20 CFR 656.22(a)]

Prearranged Employment The petitioner must provide evidence of prearranged employment for the beneficiary, which is met by the petitioner when the job offer description portion in Part A of the Form ETA-750 is signed and completed. [See 20 CFR 656.22(b)(1)]

Qualifying as an Alien of Exceptional Ability, Schedule A, Group II Follow the steps as they appear below:

Step	Action				
C1	Look for evidence that the notice of posting has been properly documented (see guidelines below).				
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">There is evidence of proper notice of posting</td> <td style="text-align: center;">Go to Step C2.</td> </tr> </tbody> </table>	IF...	THEN...	There is evidence of proper notice of posting	Go to Step C2.
IF...	THEN...				
There is evidence of proper notice of posting	Go to Step C2.				

	There is NOT evidence of proper notice of posting	Note the deficiency. Go to Step 6.6.
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Notice of Posting A notice of posting is the document used to notify qualified U.S. workers in the area of intended employment that the petition has been filed.

Notice must be provided to the petitioner's employees in the intended area of employment or the employees' bargaining unit representatives as of the date of filing. [See 20 CFR 656.22(b)(2)]

Determining Notice of Posting Acceptability The format and contents of the notice of posting, as well as where the notice was posted, must be evaluated by the officer. This table describes the required format and contents for a notice of posting.

If the employees in the area of intended employment...	Then the format is...	And will include...
Have bargaining unit representatives	A letter from the petitioner to the bargaining unit representatives	-Date of posting (duration of at least 10 consecutive days) -Location of posting -Occupation -Petitioner's name -Location of position
Do not have bargaining unit representatives	The actual job offer notice that was posted	

Area of Intended Employment This table identifies the location where the notice is to be posted.

If the petitioner will be...	Then the notice will be posted at the location of the...
Directly utilizing the beneficiary's services	Petitioner's main place of business, or its business location in the area of intended employment.
Contracting out the beneficiary's services to other organizations	Petitioning employer/contractor, not at the actual work site.

Step	Action						
C2	Review the documentation to see if the alien qualifies as an alien of exceptional ability under Schedule A, Group II (see requirements below). <table border="1" style="margin-left: 20px; margin-top: 10px;"> <thead> <tr> <th style="width: 50%; text-align: center;">IF...</th> <th style="width: 50%; text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">The alien qualifies for the blanket waiver and all other requirements</td> <td style="text-align: center;">Go to Step C3.</td> </tr> <tr> <td style="text-align: center;">The alien does not qualify for the blanket waiver.</td> <td style="text-align: center;">Note the deficiency. Go to step 6.6.</td> </tr> </tbody> </table>	IF...	THEN...	The alien qualifies for the blanket waiver and all other requirements	Go to Step C3.	The alien does not qualify for the blanket waiver.	Note the deficiency. Go to step 6.6.
IF...	THEN...						
The alien qualifies for the blanket waiver and all other requirements	Go to Step C3.						
The alien does not qualify for the blanket waiver.	Note the deficiency. Go to step 6.6.						

I-LINK

Eligibility
Requirements
for Aliens of
Exceptional
Ability

Eligibility Requirements for Aliens of Exceptional Ability in the sciences or arts applying under the DOL Blanket Labor Certification (Schedule A, Group II) can be found under 20 CFR 656.11 & 22.

Note that what DOL considers "exceptional ability" for purposes of a blanket labor certificate is not the same as, and is more exacting than, what qualifies as "exceptional ability" for purposes of an E21 visa petition. It may be that the facts of a given E21 case will satisfy each standard, but it is necessary for the adjudicator to use the DOL standards *only* for determining whether the case qualifies for a blanket labor certificate and the U.S. CIS standards *only* for determining whether the petitioner has met the requirements for an E21 petition.

Generally, aliens of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same may qualify. The DOL exceptional ability requirements do **NOT** include occupations in the performing arts.

Eligibility
Requirements
for Aliens of
Exceptional
Ability, cont.

In order to qualify as an alien of exceptional ability in the sciences, arts, and business under the DOL requirements, the individual must have at least two of the following seven types of evidence:

1. Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought.
2. Documentation of the alien's membership in international associations in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields.
3. Published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material.
4. Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought.
5. Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought.
6. Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation.
7. Evidence of the display of the alien's work in the field for which certification is sought, at artistic exhibitions in more than one country.

Note: It is the quality and caliber of the evidence and not merely the quantity, which will determine the significance of the beneficiary's contributions.

Step	Establishing Beneficiary Requirements under Schedule A Group II
C2	

(cont)	1	<p style="text-align: center;">Documentation of the alien's receipt of internationally-recognized prizes or awards for excellence in the field for which certification is sought.</p> <p>The evidence should clearly establish that the award is international in scope, rather than local, regional, or provincial in nature. Academic awards (master's and doctorate's degrees, Dean's List, Chair's list, Phi Beta Kappa, Honors society, or Valedictorian) received while pursuing an education do not qualify under this category because they are normally limited to the individual school making the award.</p> <p>Additionally, the evidence should clearly establish the origination, purpose, and significance of each award, and how the award has set the alien apart from others as having exceptional ability.</p> <p>Finally, please note that student certificates of appreciation, grants, tuition waivers, and fellowships are routinely awarded to individuals with academic merit or economic need and are not considered to be indicative of the beneficiary's claimed international acclaim</p>
C2 (cont)	2	<p style="text-align: center;">Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields.</p> <p>This evidence should provide the minimum requirements and criteria used to obtain membership in the association in which the alien claims membership to determine if the association requires outstanding achievements of its members. Additional evidence may include proof of the total number of current members, the beneficiary's rank compared to other members in the association, the status held by the association in the international community in the field of endeavor, and any other conditions or requirements of membership.</p>

<p>C2 (cont)</p>	<p>3</p> <p>Published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material.</p> <p>The evidence should establish the significance of the published material submitted about the alien's work and how it has set the alien apart from others as having exceptional ability. Additionally, in order to help in determining the value of the material, the evidence should include the publication's name; the number of times it is published each year; the number of copies printed; and whether it has local, national, or international circulation.</p> <p>Scientific footnotes in the research papers of others and entries in a citation index do not usually constitute published material about the beneficiary. The other scientists are legally obligated to identify any component of their research findings that are based on the research of others. While this demonstrates that others are aware of his work, unevaluated listings in a subject matter index or footnote or reference to the work without evaluation is insufficient to establish its significance. The exception to this is if the beneficiary is specifically cited as being authoritative in the field of endeavor.</p>
<p>C2 (cont)</p>	<p>4</p> <p>Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought.</p> <p>The evidence should establish the significance of the work judged by the alien and the criteria used to choose the alien as a judge. Was the alien chosen through a competitive process from a pool of highly skilled candidates?</p>

	5	<p>Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought.</p> <p>The mere submission of volumes of research papers and scholarly articles, or other artistic and business contributions, and making unsupported and generalized statements claiming the beneficiary has made original contributions of major significance does not establish eligibility for this category. The record should include significant documentation to establish how the alien's work is considered original and how it has made a major contribution of significance to the field of endeavor compared to all others in the field, and the credentials of the individual, institution, or organization making the claim.</p>
C2 (cont)	6	<p>Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation.</p> <p>More than just submitting stacks of copies of scholarly articles, the evidence should establish the significance or value of the published material and how it has set the alien apart from others in the field as having exceptional ability.</p> <p>Remember, scholarly articles where the beneficiary is the <u>primary author</u> of an article, that is, the first person listed in a group of authors, holds more value than if the beneficiary is included as only a co-author.</p>
	7	<p>Evidence of the display of the alien's work in the field for which certification is sought, at artistic exhibitions in more than one country.</p> <p>The evidence should establish the significance of the exhibition or showcase where the alien's work has been displayed.</p>

Letters of
Recommendation
s

Letters from experts in the field of endeavor may be helpful when assessing the significance of the beneficiary's contributions to the field. Frequently, letters are submitted as evidence that make general assertions about the beneficiary; that merely indicate that he or she is a competent, respected figure within the field of endeavor; and/or that cite little or no concrete evidence in support of the assertions. These letters should be considered but do not necessarily show the beneficiary's extraordinary ability.

Step	Action
C3	Certify the ETA-750 at the bottom of Part B (see guidelines below). Go to Step 6.6.

How to Certify a Labor

Certification for Schedule A

20 CFR 656.22(f) states that:

“If aliens and the employer(s) have met the requirements of this paragraph (b), the Immigration or Consular Officer shall indicate on the Application for Alien Employment Certification form the occupation, the immigration or consular office which made the determination pursuant to this paragraph (b), and the date of the determination (See 20 CFR 656.30 of this part for the significance of this date). The Immigration or Consular Officer shall forward promptly to the Director copies of the Application of Alien Employment Certification form, without the attachments.”

It suggested that the “Endorsements” field at the bottom of Part B of both copies of the ETA-750, Application for Alien Employment Certification, be completed as follows:

Schedule A Group II
Occupation
Officer’s Stamp Number & Date of Adjudication

Forward copy of the certified ETA-750 to:

Department of Labor-ETA
Room C-4318
200 Constitution Ave, NW
Washington, DC 20210

Part D: Special Handling, Shepherders

Shepherders Pursuant to 20 CFR 656.21a(b)(1), there is another group not included in Schedule A that has special labor certification provisions. A shepherd who has been working in a valid nonimmigrant status as a shepherd for 33 of the last 36 months could qualify under the EW-3 “other worker” category and is not required to get a labor certification. The documentation for such an application shall include:
[8 CFR 204.5(l)(2).]

- (1) A completed Application for Alien Employment Certification form, including the Job Offer for Alien Employment, and the Statement of Qualification of Alien; and
- (2) A signed letter or letters from all U.S. employers who have employed the alien as a shepherd during the immediately preceding 36 months, attesting that the alien has been employed in the United States lawfully and continuously as a shepherd, for at least 33 of the immediately preceding 36 months.

Step	Action						
D1	<p data-bbox="451 814 1205 877">Review the documentation to see if the alien qualifies as a shepherd (see requirements above).</p> <table border="1" data-bbox="440 909 1205 1119"> <thead> <tr> <th data-bbox="440 909 850 945">IF...</th> <th data-bbox="850 909 1205 945">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="440 945 850 1050">The alien qualifies for the blanket waiver and all other requirements</td> <td data-bbox="850 945 1205 1050">Go to Step D2.</td> </tr> <tr> <td data-bbox="440 1050 850 1119">The alien does not qualify for the blanket waiver.</td> <td data-bbox="850 1050 1205 1119">Note the deficiency. Go to Step 7.7.</td> </tr> </tbody> </table>	IF...	THEN...	The alien qualifies for the blanket waiver and all other requirements	Go to Step D2.	The alien does not qualify for the blanket waiver.	Note the deficiency. Go to Step 7.7.
IF...	THEN...						
The alien qualifies for the blanket waiver and all other requirements	Go to Step D2.						
The alien does not qualify for the blanket waiver.	Note the deficiency. Go to Step 7.7.						
D2	Certify the ETA-750 at the bottom of Part B (see guidelines below). Go to Step 7.7.						

How to
Endorse an
ETA-750 for
Shepherders

20 CFR 656.21a(b)(2)(ii) states that:

“If aliens and the employer(s) have met the requirements of this paragraph (b), the Immigration or Consular Officer shall indicate on the Application for Alien Employment Certification form the occupation, the immigration or consular office which made the determination pursuant to this paragraph (b), and the date of the determination (see 20 CFR 656.30 of this part for the significance of this date). The Immigration or Consular Officer shall forward promptly to the Director copies of the Application of Alien Employment Certification form, without the attachments.”

It is suggested that the “Endorsements” field at the bottom of Part B of both copies of the ETA-750, Application for Alien Employment Certification, be completed as follows:

Shepherdder
California (Nebraska, Texas, or Vermont) Service Center
Officer’s Stamp Number & Date of Adjudication

Forward copy of the certified ETA-750 to:

Department of Labor-ETA
Room C-4318
200 Constitution Ave, NW
Washington, DC 20210

Part E: National Interest Waiver

Procedures for
Qualifying
under the
National
Interest Waiver

Follow the procedures below to adjudicate a request for a National Interest Waiver (NIW).

Step	Action						
E1	Review the documentation to see if the alien qualifies under the National Interest Waiver requirements (see requirements below). <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">IF...</th> <th style="text-align: center;">THEN...</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">The alien qualifies for the National Interest Waiver and all other requirements</td> <td style="text-align: center;">Go to Step 6.6.</td> </tr> <tr> <td style="text-align: center;">The alien does NOT qualify under National Interest Waiver requirements</td> <td style="text-align: center;">Note the deficiency and go to Step 6.6.</td> </tr> </tbody> </table>	IF...	THEN...	The alien qualifies for the National Interest Waiver and all other requirements	Go to Step 6.6.	The alien does NOT qualify under National Interest Waiver requirements	Note the deficiency and go to Step 6.6.
IF...	THEN...						
The alien qualifies for the National Interest Waiver and all other requirements	Go to Step 6.6.						
The alien does NOT qualify under National Interest Waiver requirements	Note the deficiency and go to Step 6.6.						

National Interest Waiver Requirements Eligibility Requirements for Advanced Degree Professionals and Aliens of Exceptional Ability Applying for an Exemption of the Job Offer [8 CFR 204.5(k)(4)(ii)]:

In order for an alien to qualify it must first be established that the alien is of exceptional ability as stated in 8 CFR 204.5(k)(3)(i) shown above.

Next, a Form ETA-750B, Statement of Qualifications of Alien, in duplicate, must be submitted.

Finally, although, the national interest is not defined in the regulations the specific evidence that must be provided to establish the alien’s eligibility for a national interest waiver is detailed below, pursuant to Matter of New York State Department of Transportation (NYSDOT), 22 Int. Dec. 3363 (Act. Assoc. Comm. 1998):

1. Evidence that the alien’s proposed employment will be national in scope.
2. Evidence that the alien seeks employment in an area of substantial intrinsic merit. His or her employment must be important and immediately apparent to the national interests of the United States.
3. Evidence to persuasively demonstrate that the national interest would be adversely affected if the petitioner were to take the time to obtain a labor certification for the alien.

Note: An alien seeking to meet the national standard must make a showing significantly above that necessary to prove the “prospective national benefit” required of all aliens seeking to qualify as “exceptional.”

Physicians in Under-served Areas Physicians applying for National Interest Waiver must meet all requirements for National Interest Waiver as mentioned above and, in addition, establish that they meet other criteria. See the “Evidentiary Requirements” section of Addendum 4 for more information regarding these additional requirements.

Addendum 2: Ability to Pay

Description This document outlines criteria and strategies for determining a petitioner’s ability to pay.

Addendum 2: Ability to Pay	Page
General Information -----	5-131
Financial Statements and Basic Ability to Pay Strategies -----	5-133
Cash-Basis & Accrual Accounting, and Depreciation-----	5-140
Evidence of the Ability to Pay -----	5-144
Sole Proprietorships-----	5-152
General Partnerships-----	5-154
Limited Partnerships-----	5-157
Corporations-----	5-160
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Uncharacteristic Financial Losses -----	5-166
Reference Chart-----	5-167

General Information

Introduction The petitioner’s ability to pay the proffered wage is key to the adjudication of the I-140 petition because it is the general method by which the Service evaluates the validity of the petitioner’s job offer to the beneficiary. If the petitioner cannot demonstrate the ability to pay the proffered wage, then the petitioner is not considered to be capable of making a permanent offer of employment to the beneficiary.

Service Must Weigh the Merits of the Job Offer It was found in Matter of Great Wall, 16 I&N Dec. 142 (Act. Reg. Comm. 1977), that in sixth preference visa petition proceedings the Service must consider the merits of the petitioner’s job offer, so that a determination can be made as to whether the job offer is realistic and whether the wage can be met. The same reasoning may be applied to the adjudication of IMMACT 90 employment-based visa petitions where the petition requires an offer of employment.

Regulatory Basis Any petition filed by or for an employment-based immigrant, which requires an offer of employment, must be accompanied by evidence that the prospective U.S. employer has the ability to pay the proffered wage. [See 8 CFR 204.5(g)(2)]

Ability to Pay Must be Demonstrated as of the Priority Date, Continuing until Visa Issuance The petitioner must demonstrate the ability to pay the proffered wage at the time the priority date is established. In addition, the petitioner must continue to demonstrate the ability to pay the proffered wage until the beneficiary obtains Lawful Permanent Resident Status. [See Matter of Great Wall, 16 I&N Dec. 142 (Act. Reg. Comm.1977), Matter of Wing’s Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), Chi-Feng Chang v. Thornburgh, 719 F. Supp. 532 (N.D. Texas 1989), 8 CFR 204.5(g)(2), 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

Going Concern The Service has long held that the offer of employment for I-140 petitions must be for permanent full-time employment. Consequently, it is not reasonable to approve an immigrant petition for a beneficiary to seek permanent employment with a petitioner who will, in all likelihood, cease to exist prior to or immediately after the immigrant petition is approved.

While the burden is on the petitioner to simply establish that the petitioning organization can pay the proffered wage from the date that the priority date is established and up to the point of immigrant visa issuance, a petition should not be approved if it is questionable that the organization will not continue to be a “going concern” into the foreseeable future, i.e. an organization actively engaged in the provision of goods and services.

Financial Statements and Basic Ability to Pay Strategies

Three Basic Approaches to Establish the Ability to Pay	<p>In general there are three basic approaches that can be used to establish a petitioners ability to pay in the year of filing:</p> <ol style="list-style-type: none"> 1. The petitioner paid the beneficiary a salary equal to or greater than the proffered wage in that year. 2. The petitioner's net income in the year of filing was equal to or greater than the proffered wage. 3. The petitioner's net current assets in the year of filing were equal to or greater than the proffered wage. <p>Keep in mind the following: Even if the evidence does not establish the ability to pay under the three basic approaches, the petitioner may still meet the requirement of ability to pay if additional evidence might also establish the petitioner's proof of ability to pay.</p> <p>Note: These are three approaches to judge ability to pay but are not the only methods of judging ability to pay.</p>
Financial Statements	<p>Financial statements are used to convey a picture of the profitability and the financial position of a business. The two most important are the income statement and the balance sheet. The income statement, balance sheet, and credible payroll records relating to the beneficiary's employment by the petitioner are the basic documents used to establish the petitioner's ability to pay the proffered wage.</p>
Income Statement	<p>The income statement shows whether or not the business earned a "profit" or net income during a specific time period. Net income is earned when <u>revenues exceed expenses</u>, but a net loss is incurred if the <u>expenses exceed the revenues</u>.</p> <p>Income statements provide useful information in the adjudication of a petitioner's ability to pay the proffered wage to include the petitioner's:</p> <ul style="list-style-type: none"> • Net income or net loss; • Gross sales/revenues (and sometimes the source of the revenue); • Cost of goods or services sold, and; • Wages, salaries, and commissions expense;
Please Note	<p>Numbers noted on financial statements and tax returns in parenthesis or with a minus sign in front of the number are negative numbers. As an example a \$10,000.00 net loss on an income statement might be expressed as (\$10,000.00) or -\$10,000.00.</p>
Income before Expenses should Not be the Determining Factor	<p>Frequently, the petitioner will draw attention to the petitioning entity's gross income before expenses. While the overall magnitude of the entity's business activities should be considered when the entity's ability to pay is marginal, it is not reasonable to consider gross income without also considering the expenses that were incurred to generate that income. [See <u>K.C.P. Food Co., Inc. v. Sava</u>, 623 F. Supp. 1080 (S.D.N.Y. 1985)]</p>

Eligibility using the Income Statement The following table describes when the petitioner may be able to establish eligibility based on the income statement for the year of filing.

If the petitioner's net income is...	Then the ability to pay is...
= or > than the proffered wage	Established
Not = or > than the proffered wage	Not established

Balance Sheet The balance sheet can be likened to a snap shot of the organization's financial position. Financial position is shown by listing the organization's:

- Assets;
- Liabilities, and;
- The equity of the owners.

The balance sheet provides useful information for the determination of the ability to pay the proffered wage to include the classification and the amount of the:

- Assets held;
- Liabilities owed

Presentation of Assets and Liabilities Assets should be presented in the balance sheet in the order of their liquidity. Likewise, liabilities should be presented in the order in which they are expected to come due.

Classified Balance Sheet A classified balance sheet categorizes assets and liabilities into two distinct groups:

- Current assets and liabilities, and;
- Long-term assets and liabilities

Gross Receipts The petitioner may request the consideration of the organization's gross income as evidence of your ability to pay the proffered wage. It is not reasonable to consider the organization's gross income without also considering the expenses incurred to generate that income.

In K.C.P. Food Co., Inc., v. Sava, 623 F. Supp. 1080 (S.D.N.Y. 1985), the court rejected the petitioner's argument that the Service should have considered income before expenses were paid rather than net income. (See also Chi-Feng Chang and Chi-Shing Chang v. Thornburgh, 719 F. Supp. 532 (N.D. Texas 1989))

Current Assets **Current assets** consist of cash and assets that are reasonably expected to be converted to cash or cash equivalents within one year from the date of the balance sheet. Examples of current assets include, but are not limited to:

- Cash;
- Accounts Receivable;
- Inventories;
- Pre-paid Expenses;
- Certain marketable securities, loans, and promissory notes, and;
- Other current assets

Current Liabilities **Current liabilities** are debts that must be paid within one year from the date of the balance sheet. Examples of current liabilities include, but are not limited to:

- Accounts payable;
- Payroll taxes due;
- Other current liabilities, and;
- Certain loans, and promissory notes

Net Current Assets **Net current assets** are the difference between current assets and current liabilities. Net current assets identify the amount of “**liquidity**” that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the balance sheet.

Long-term Assets **Long-term assets** are any assets that are not reasonably expected to be converted to cash or cash equivalents within one year from the date of the balance sheet to include:

- Plant and Equipment, and;
- Certain receivables, loans, and promissory notes

Long-term Liabilities **Long-term liabilities** are any liabilities that will not have to be paid within one year from the date of the balance sheet to include certain payables, loans, and promissory notes.

Long-term Assets and Liabilities are not Evaluated to Determine the Ability to Pay Long-term assets and liabilities are not considered when evaluating the petitioner’s ability to pay the proffered wage because they do not directly affect the petitioner’s liquidity during the year that is being evaluated.

As an example, consider the long-term assets of a restaurant. It is not reasonable to expect a restaurant owner to sell his stove, cash register, or refrigerator in order to pay the beneficiary’s salary.

Establishing Eligibility using the The following table describes when the petitioner may be able to establish eligibility based on the balance sheet for the year of filing.

If the petitioner’s net current assets are...	Then the ability to pay is...
= or > than the proffered wage	Established

Not = or > than the proffered wage	Not established
------------------------------------	-----------------

Beneficiary's Salary can be Deducted from the Proffered Wage to Determine the Ability to Pay

If the record contains credible documentary evidence that the petitioner has paid the beneficiary in the year of filing, then his or her salary can be deducted from the proffered wage in order to establish the petitioner's ability to pay the proffered wage.

The following table describes when the petitioner may be able to establish eligibility based on the income statement or the balance sheet when the organization has already paid a portion of the beneficiary's salary in the year of filing.

If the difference between the salary paid and the proffered wage is...	Then the ability to pay is...
= or < the net income or taxable income	Established
> the net income	Not established
= or < the net current assets	Established
> the net current assets	Not established

Multiple Petition Considerations

A petitioner may file multiple I-140 petitions. In this instance, the petitioner's ability to pay the total amount of the proffered wage for all the beneficiaries must be established. If it is not established, the petitioner must identify which petition or petitions are supported by the petitioner's ability to pay. An RFE may be appropriate to solicit this information.

Summary of Basic Ability to Pay Strategies

There are three basic ability to pay strategies relating to the year of filing.

1. The beneficiary was paid at least the proffered wage.
2. The petitioner had net income that was at least equal to the proffered wage.
3. The petitioner had sufficient net current assets to pay the proffered wage.

If the petitioner paid the beneficiary an amount less than the proffered wage, it must be shown that the difference between the wages actually paid and the proffered wage could have been paid by the petitioner.

Cash-Basis & Accrual Accounting, and Depreciation

Introduction

There are a variety of methods for keeping track of accounting data and presenting financial information. The two most commonly used are the cash-basis and accrual methods.

Cash-Basis Method

The cash-basis method of accounting is the recognition of:

- Revenue when it is received, and;
- Liabilities/Expenses when they are due.

This accounting method is not recommended for accounting purposes because both revenues and expenses can be understated.

Accrual
Method

The accrual method of accounting is the recognition of:

- Revenue when the company has a right to receive it, and;
- Liabilities/Expenses when the company has a legal obligation to pay them.

This accounting method is generally recommended for accounting purposes because it provides a more accurate picture of an organization's profitability and debt position.

Capital Assets

Capital assets are business assets that have a useful life that is longer than one year. Organizations that utilize the accrual accounting method must spread the cost of or **depreciate** capital assets over the useful life of the asset. In addition, all business taxpayers are required by the IRS to depreciate their capital assets over their useful life for tax purposes.

Depreciation
Defined

Depreciation is the means by which the cost of a capital asset is charged off as an expense over its useful life. This approach helps ensure that the organization's net income or net loss is not over-stated or under-stated on the income statement.

As an example, consider what would happen if a restaurant purchased a commercial oven for \$10,000. Let's say that this asset has a useful life of 10 years as determined by accounting standards. Under accrual accounting, it would not be reasonable for the owner to claim an expense of \$10,000 during the first year it owned the oven, because the organization will generate income through the use of the stove for many years. If the owner did this, his net income would be under-stated. Conversely, if the owner claimed no expense in that year for the use of the stove, his net income would be over-stated.

Amortization
Defined

Amortization is the means by which the cost of an intangible is charged off as an expense of intangible capital asset over its useful life of the asset. An example of an intangible asset would be the extra money that a person might be willing to pay for a business because of its location or reputation. If the money paid exceeds the actual value of the assets purchased, it is classified as a payment for "good will." The payment of this extra money would be **amortized** as a business expense over a period of years.

Depreciation and Amortization as it Relates to Ability to Pay

Petitioners and their representatives will frequently request the consideration of their depreciation or amortization expenses as a non-cash expense on their financial statements and tax returns in order to establish the ability to pay. In essence, they will request the addition of any depreciation or amortization expense claimed on the financial document to the business' net income in order to increase the net income to an amount sufficient to meet the wage.

In determining the petitioner's ability to pay the proffered wage, the Service will examine the net income reflected on the tax return or income statement, without adding any expenses back to the net income. This approach to determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elates Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. V. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Fend Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D.Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc. v. Sava*, the court held the Service had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income figure, rather than the petitioner's gross income. 623 F.Supp. at 1084. The court refused to consider income before expenses were paid but rather relied on the petitioner's net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F.Supp. at 537; see also *Elates Restaurant Corp. v. Sava*, 632 F.Supp. at 1054.

Depreciation and the Statement of Cash Flows

A statement of cash flows identifies the change in cash and cash equivalents during the period as they relate to operating, investing or financing activities. To put it simply, the calculation of the statement of cash flows converts accrual accounting records to the cash-basis method of accounting in order to arrive at the total amount of cash inflows to cash outflows over a period of time.

The addition of depreciation to net income is part of this calculation and is frequently discussed by petitioners when they are trying to establish their ability to pay. However, the addition of depreciation is but one of many steps that must occur to complete the statement of cash flows. This one portion of the calculation should not be considered without the inclusion of a credible statement of cash flows in the record.

Evidence of the Ability to Pay

Primary Evidence	<p>Primary evidence of a petitioner's ability to pay the proffered wage shall be either:</p> <ul style="list-style-type: none"> • Annual Reports; • Federal Tax Returns; or • Audited Financial Statements. [See 8 CFR 204.5(g)(2)] <p>Note: The officer must principally rely on primary evidence, such as federal tax returns or audited or reviewed financial statements, and not on secondary evidence in order to determine that the petitioner has the ability to pay the proffered wage. [See <u>Elates Restaurant Corp. v. Sava</u>, 632 F. Supp. 1049 (S.D.N.Y. 1986), <u>K.C.P. Food Co., Inc. v. Sava</u>, 623 F. Supp. 1080 (S.D.N.Y. 1985)]</p>
Service May Rely on Federal Tax Returns	<p>The officer may request and the petitioner may submit supplemental, secondary evidence such as bank statements and general personnel records. However, secondary evidence does not represent any financial resources that would not be reflected in the petitioner's tax return or credible financial statements. Therefore, the officer must principally rely on primary evidence, such as federal tax returns or audited or reviewed financial statements and not on secondary evidence in order to determine that the petitioner has the ability to pay the proffered wage. [See <u>Elates Restaurant Corp. v. Sava</u>, 632 F. Supp. 1049 (S.D.N.Y. 1986), <u>K.C.P. Food Co., Inc. v. Sava</u>, 623 F. Supp. 1080 (S.D.N.Y. 1985)]</p>
Reviewed Financial Statements	<p>Reviewed financial statements can also be accepted as credible evidence of the petitioner's ability to pay the proffered wage.</p>
Payroll Documentation Relating to the Beneficiary	<p>Credible payroll documentation that directly relates to the employment of the beneficiary in the year of filing, such as his or her individual federal tax return, accompanied by a Form W-2s or Form 1099s may also accepted as credible evidence of the petitioner's ability to pay the proffered wage.</p>
Compiled or Internally Generated Financial Statements Companies with 100 or More Workers	<p>Compiled or internally generated financial statements are not considered to be credible evidence of an organization's business activities as they are created solely on the basis of representations of the management of the organization.</p> <p>In a case where the prospective U.S. employer employs 100 or more workers, a statement from the financial officer of the organization that establishes the prospective employer's ability to pay the proffered wage MAY be accepted.</p> <p>In appropriate cases, additional evidence may be submitted by the petitioner or requested by the Service. [See 8 CFR 204.5(g)(2)]</p>

Credible Evidence may not Establish eligibility

This section discusses the various categories of evidence that are routinely submitted to document a petitioner’s ability to pay the proffered wage. It should be noted that the submission of what is considered to be “credible” evidence is not tantamount to demonstrating the petitioner’s eligibility. The evidence submitted may or may not establish the petitioner’s ability to pay the proffered wage.

In other words, a tax return may be submitted by the petitioner and be considered credible evidence, but the information provided on the tax return may fail to establish that the eligibility requirement has been met.

Evidence should Encompass the Year of Filing

In order to determine that the petitioner had the ability to pay the proffered wage at the time of filing it must first be determined that the evidence submitted is relevant to the filing date.

In the instance where the priority date is so recent that primary evidence of the petitioner’s ability to pay at the time of filing is not available, the officer may rely on primary evidence submitted for the period of time immediately prior to the date of filing.

Calendar or Fiscal Year

Organizations publish annual reports and financial statements, and file tax returns based on either a calendar or a fiscal year.

The business elected reporting year will be noted on the top of all partnership, corporation, or S corporation tax returns, and will also be noted in the accountant’s letter that accompanies all audited or reviewed financial statements. If no specific dates are noted on the tax return, it is assumed that the tax year is based on a calendar year.

If the reporting year is a...	Then the year starts on...	And ends on...
Calendar year	January 1 st	December 31 st
Fiscal year	The 1 st day of any month other than January	The last day of any month other than December

Tax Year Cannot be Changed without IRS Permission

An organization cannot change its year for tax purposes without permission from the IRS. Tax returns for consecutive years that have different reporting years may be an indication that the documents are fraudulent.

In addition, the ending balances on the balance sheet for one year should match the beginning balances for the next year.

Federal Tax Returns

Federal tax returns are designed to present information in a manner that is similar to the income statement and balance sheet format. The front page of federal tax or informational returns is an income statement and the schedule L is a balance sheet.

The following table identifies the IRS Form number and the type of information provided by each tax return.

If the Organization is a...	Then the Tax Return is Form...	And the tax returns provides a modified...	
		Income Statement	Balance Sheet
Corporation	1120 or 1120EZ	X	X
S Corporation	1120S or 1120EZ	X	X
Partnership	1065	X	X
Sole Proprietorship	1040, with Schedule C	X	
Non-profit	990 or 990EZ	X	X

Due Dates for Filing Federal Tax Returns

The due date for individuals and partnerships is the 15th day of the 4th month after the end of the tax year. Individuals include sole proprietorships, partners, and S corporation shareholders.

The due date for filing returns for corporations is the 15th day of the 3rd month after the end of the tax year.

Therefore, any petitioner's tax return should generally be available for the Service's review within three to four months after the end of the petitioner's tax year.

Automatic 6 Month Extension to file Tax Return

The IRS will grant an automatic six months extension of time to any taxpayer. However, any extension beyond six months is made on a case-by-case basis and requires written permission from the IRS. Therefore, any petitioner's tax return for a given year should be available for the Service's review nine to ten months after the end of their tax year at the very latest.

Evidence of the IRS' written approval of an extension of time may be requested by the officer should a petitioner claim that a tax return is not available beyond that amount of time.

Net Operating Losses	<p>If the deductible expenses for the tax year exceed the business' gross income for the year, certain businesses may deduct the loss from their income in another year or years. The loss claimed in a year other than the year in which it was incurred is called a net operating loss (NOL).</p> <p>Partnerships and S corporations cannot use an NOL, but partners or shareholders can use their separate shares of the partnership's or corporation's business income and deductions to calculate their own NOLs.</p> <p>It is important to consider taxable income BEFORE the NOL deduction in order to determine whether the petitioner had sufficient taxable income in the year of filing to pay the proffered wage.</p>
Annual Reports	<p>Annual Reports are published by all publicly traded corporations in the United States. Annual reports must include audited or reviewed financial statements in order to be credible evidence of a business' ability to pay the proffered wage.</p>
Internally Generated Financial Statements	<p>Internally generated financial statements are created by and are based on the representations of the management of the organization. Employees of the petitioning organization prepare the financial statements and they are not subject to the scrutiny of anyone outside the organization.</p> <p>Internally generated financial statements are NOT a reliable type of evidence for the determination of whether the petitioner can pay the proffered wage.</p>
Compiled Financial Statements	<p>A compilation is the preparation of financial statements from the accounting records and other representations of the management of the organization. The accountant who prepares the financial statements is not required:</p> <ul style="list-style-type: none"> • To verify any information provided by management, or: • Have any degree of independence from the organization. <p>Compiled financial statements are NOT a reliable type of evidence for the determination of whether the petitioner can pay the proffered wage.</p>

Reviewed
Financial
Statements

A review of financial statements involves:

- Obtaining an understanding of the entity's accounting system;
- Applying analytical procedures to financial data, and;
- Making inquiries of persons responsible for the organization's financial and accounting matters.

An accountant (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform a review.

The CPA will then either prepare the financial statements or review internally generated financial statements. The objective of a review is to express limited assurance that the information provided in the financial statements is in accordance with generally accepted accounting principles.

Reviewed financial statements are a reliable type of evidence for the determination of whether the petitioner possesses the ability to pay the proffered wage.

Audited
Financial
Statements

An audit is the examination of financial statements, the accounting records and other supporting evidence both within and outside the organization. It is more substantial in scope than a review, but involves many of the procedures that are performed during a review.

An auditor (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform an audit.

Auditors never express an opinion on the fairness of the financial statements without first performing an audit. The auditor's report will either contain an expression of opinion regarding the fairness of the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed.

Audited financial statements are a reliable type of evidence for the determination of whether the petitioner has the ability to pay the proffered wage.

Bank Statements

The petitioner may submit copies of the business' bank statements for the year of filing as secondary evidence of ability to pay. Though the bank statements may indicate a positive ending balance each month, it must be shown that the petitioner's ending bank balances for the year:

- Were greater than or equal to the amount of the wage, or:
- Increased incrementally with the amount of funds necessary to meet the wage.

Please note that most businesses and individuals keep a certain amount of funds in their bank accounts as a "cushion." As an example, if the bank statements submitted all indicate that the ending balances are +/- \$500.00, it can be concluded that the ending balance in each statement shows the same \$500.00 cushion.

The submission of one or two bank statements is not generally persuasive.

Wages Paid to Other Employees

Petitioners will often request the consideration of the compensation of officers' deduction and other salary/wage deductions on the tax return as a source of available funds with which to compensate the beneficiary. These salaries represent funds already expended by the petitioner. Therefore, these expenses are not generally considered to be readily available funds to pay the proffered wage.

The exceptions to this line of reasoning is if:

- The beneficiary is being hired to replace another individual employed by the petitioner (who was employed in the same position as the position being offered within the business), and;
- The other employee has left the business.

The record must show that the wage paid to the other employee was equal to or greater than the proffered wage. If the other employee was paid less than the proffered wage, then the evidence must show that the additional amount of wages could have been paid by the petitioner in the year of filing.

Sole Proprietorships

Definition

A sole proprietorship is a business that is owned by one individual.

How a Sole Proprietorship is Created

A sole proprietorship is the easiest business to create. An individual merely establishes a business, and the sole proprietorship is automatically created.

Unlimited Liability

A sole proprietorship is not legally separate from its owner. The sole proprietor is personally responsible for the debts of the business. Creditors can sue the proprietor and, if successful, take the proprietor's houses, cars, or other non-exempt assets to pay off the proprietor's debts. Therefore, the sole proprietor's income, personal assets and liabilities may be considered when trying to determine whether the sole proprietorship can pay the beneficiary's proffered wage.

Owner's Individual Federal Tax Return

Sole proprietors must report the income and expenses from their businesses in their individual Form 1040 federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return.

Evaluating the Sole Proprietor's Ability to Pay the Proffered Wage

When evaluating a sole proprietor's ability to pay the proffered wage, the officer must take into consideration all of the income and expenses generated by the sole proprietor and his dependents.

The sole proprietor must be able to demonstrate that he or she can meet their existing business expenses and pay the proffered wage. In addition they must show that they can sustain themselves and their dependents.

- The year of filing, and;
- For all subsequent years until the beneficiary obtains permanent residence.

The Federal Poverty Guidelines for the year that the priority date is established may be used as a reference point for evaluating ability to pay. In some instances, the petitioner may not possess sufficient income after expenses to establish eligibility, but may have sufficient available net assets to meet the eligibility requirements.

Net Current Assets

Net current assets are assets that can reasonably be expected to be converted to cash or a cash equivalent within the year less any financial encumbrances on the assets.

Sole Proprietor's Ability to Pay

The following table describes when a sole proprietor may be able to establish the ability to pay.

If the Sole Proprietor's...	Is...	Then Ability to Pay Is...
Adjusted Gross income less personal expenses	= or > the proffered wage	Established
Adjusted Gross income less personal expenses	< the proffered wage	Not established
Net current assets	= or > the proffered wage	Established
Net current assets	< the proffered wage	Not Established

Note: The Adjusted Gross Income is the income reflected on the bottom line of the front page of the Form 1040 (Individual Federal Tax Return).

General Partnerships

Definition

A partnership means the shared ownership of a business.

Unlimited Liability – General Partners are Jointly and Severally Liable

A partnership is not legally separate from its partners. The partners are personally responsible for the debts of the partnership. Creditors can sue any and all the general partners to take their houses, cars, or other personal assets to pay off the partnership's debts. Therefore, the general partners' income, personal assets and liabilities may be considered when trying to determine whether the partnership can pay the beneficiary's proffered wage.

How a General Partnership is Created

No formal, written partnership agreement is required to create a general partnership. However, many general partnerships do execute partnership agreements.

In the United States, partnerships must obtain an EIN (employer's identification number) for the partnership.

Partnership Agreements

A partnership agreement identifies:

- The names of the partners;
- The amount and type of investment made by each partner
- Whether the partners hold a limited partnership interest;
- Each partner's initial percentage of ownership;
- The type of business to be conducted by the partnership;
- How partnership interests can be transferred, and;
- The conditions under which the partnership can be dissolved.

The partnership may not engage in business activities, transfer partnership interests, or dissolve in a manner that conflicts with the terms specified in the partnership agreement, if any.

Partnership Tax Returns

In the U.S., partnerships are not taxable entities. The profits and losses of the partnerships are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax return on Form Schedule K.

The partnership's tax return provides evidence of the ability of the partnership to pay the proffered wage.

Ownership Percentage may not = the Capital Investment

A partner's percentage of ownership in a partnership is not always equal to the percentage of his or her capital investment in the partnership, nor does it mean that the ownership of the business will be equally shared.

The partnership agreement will stipulate the percentage of ownership if it differs from the percentage of the capital investment.

In addition, shared ownership of the business does not always mean shared ownership of the assets used in the business.

Partnership's Ability to Pay

The following table describes when a partnership may be able to establish the ability to pay.

If the Partnership's...	Is...	Then Ability to Pay Is...
-------------------------	-------	---------------------------

Net income	= or > the proffered wage	Established
Net income	< the proffered wage	Not established
Net current assets	= or > the proffered wage	Established
Net current assets	< the proffered wage	Not established

General Partners' Individual Ability to Pay The following table describes when a general partner may be able to establish the ability to pay.

Gross income less personal expenses/federal poverty guidelines	= or > the proffered wage	Established
Gross income less personal expenses/federal poverty guidelines	< the proffered wage	Not established
Net current assets	= or > the proffered wage	Established
Net current assets	< the proffered wage	Not Established

Please Note For examples of how to analyze an individual's ability to pay the proffered wage, please review the Sole Proprietorship section of the SOP.

Limited Partnerships

Definition A limited partnership is the shared ownership of a business in which certain partners provide a capital investment without being held personally liable for the debts of the partnership beyond the level of their investment.

The trade off for having the limited liability is that the limited partner may not materially participate in the running of the business or attempt to control the business.

Both Unlimited and Limited Liability – General Partners are Jointly and Severally Liable All general partners of a limited partnership are personally responsible for the debts of the partnership. Creditors can sue any and all of the general partners to take their houses, cars, or other personal assets to pay off the partnership's debts. Therefore, the general partners' income, personal assets and liabilities may be considered when trying to determine whether the sole proprietorship can pay the beneficiary's proffered wage.

Limited partners are only liable up to the amount of their capital investment in the partnership. Therefore, the limited partners' income, personal assets and liabilities may NOT be considered when trying to determine whether the limited partnership can pay the beneficiary's proffered wage.

The limited liability defense can be legally stripped from the limited partner if he or she is found to have materially participated in the business.

How a Limited Partnership is Created	<p>A formal, written partnership agreement is required to create a limited partnership.</p> <p>Every limited partnership must have at least one general partner.</p> <p>In the United States, limited partnerships must obtain an EIN (employer's identification number) for the partnership.</p>
Limited Partners have NO Control	<p>Limited partners may own a portion of a limited partnership, but they do not have any control over the partnership, as they cannot materially participate in the operation of the business.</p>
Limited Partnership Agreements	<p>A limited partnership agreement identifies:</p> <ul style="list-style-type: none"> • The names of the partners; • The amount and type of investment made by each partner • Whether the partners hold a limited partnership interest; • Each partner's initial percentage of ownership; • The type of business to be conducted by the partnership; • How partnership interests can be transferred, and; • The conditions under which the partnership can be dissolved. <p>The limited partnership may not engage in business activities, transfer partnership interests, or dissolve in a manner that conflicts with the terms specified in the partnership agreement, if any.</p>
Limited Partnership Tax Returns	<p>In the U.S., limited partnerships are not taxable entities. The profits and losses of the partnerships are reported on a partnership tax return, Form 1065, and flow through to the partner's individual tax returns on Form Schedule K.</p> <p>The partnership's tax return provides evidence of the ability of the partnership's to pay the proffered wage.</p> <p>The limited partnership's tax return also provides certain information that is relevant to the ownership and control of the partnership to include the:</p> <ul style="list-style-type: none"> • Date of origination of the partnership; • The names and % of ownership for each of the partners at year end, and; • Names of the general and limited partners

Ownership Percentage may not = the Capital Investment A partner's percentage of ownership in a partnership is not always equal to the percentage of his or her capital investment in the partnership, nor does it mean that the ownership of the business will be equally shared.

The partnership agreement will stipulate the percentage of ownership if it differs from the percentage of the capital investment.

In addition, shared ownership of the business does not always mean shared ownership of the assets used in the business.

Limited Partnership's Ability to Pay The following table describes when a limited partnership may be able to establish the ability to pay.

If the Partnership's...	Is...	Then Ability to Pay Is...
Net income	= or > the proffered wage	Established
Net income	< the proffered wage	Not established
Net current assets	= or > the proffered wage	Established
Net current assets	< the proffered wage	Not established

Net Current Assets Net Current assets are assets that can reasonably be expected to be converted to cash or a cash equivalent within the year less any financial encumbrances on the assets.

General Partners' Ability to Pay The following table describes when a general partner of a limited partnership may be able to establish the ability to pay.

Gross income less personal expenses/federal poverty guidelines	= or > the proffered wage	Established
Gross income less personal expenses/federal poverty guidelines	< the proffered wage	Not established
Net current assets	= or > the proffered wage	Established
Net current assets	< the proffered wage	Not Established

Corporations

Definition A corporation is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

Corporations are a taxable entity and must pay taxes on the net income generated by them prior to distributing the income to its shareholders.

Limited Liability The debts of the corporation are the responsibility of the corporation, not the individual shareholders. If a corporation goes bankrupt, the shareholders are not liable for any debts beyond the level of their investment in the corporation.

Normally, creditors cannot sue the shareholder to take his or her house, car, or other personal assets to pay off corporate debts. This limited liability is one of the big attractions of corporations. However, the shareholders' income, personal assets and liabilities may NOT be considered when trying to determine whether the corporation can pay the beneficiary's proffered wage.

Corporation's Separate Legal Existence Precludes the Consideration of Shareholders' Personal Assets A corporation is a separate and distinct legal entity from its owners or stockholders. Consequently, any assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. [See Matter of M, 8 I&N Dec. 24 (BIA 1958), Matter of Aphrodite Investments, Ltd., 17 I&N Dec. 530 (Comm. 1980), and Matter of Tessel, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980)]

Sub-Chapter S Corporations Sub-Chapter S corporations or "S Corps" as they are called, are a hybrid of the standard corporation.

The main differences between S Corps and regular corporations is that S Corps are not taxable entities and are limited to a certain type and number of shareholders.

It should be noted that S Corps are just like regular corporations in that they are separate and distinct legal entities from their owners or stockholders. Consequently, any assets of their shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage.

S Corps are Not Taxable Entities S Corps are not taxable entities. They are required to file an informational tax return, called a Form 1120S, U.S. S Corporation Income Tax Return. Income and expenses flows through to the shareholders' individual federal tax returns on Form Schedule K, in the same manner as the income and expenses of a partnership.

The S corporation's tax return provides evidence of the ability of the S corporation's ability to pay the proffered wage.

Qualifying for S Corp Status To qualify for S Corp status under IRS rules, a corporation must meet a number of requirements. It must:

- Be a domestic corporation, i.e. organized in the U.S. under federal or state law;
- Have only one class of stock, common;
- Have no more than 35 shareholders;
- Have as shareholders only individuals, estates, and certain trusts (partnerships and corporations cannot be shareholders);
- Have shareholders that are U.S. citizens or residents of the U.S. (per the IRS definition of residents). Nonresident aliens cannot be shareholders.

Federal Tax Returns Generally, corporations doing business in the United States must file a federal tax return each year, the Form 1120 U.S. Corporation Income Tax Return to report its profits and losses and to identify and pay the corporation's tax liability.

The corporation's tax return provides evidence of the ability of the corporation to pay the proffered wage.

The federal tax return provides certain information that is relevant to the corporation's ability to pay the proffered wage to include the:

- Date of incorporation, and
- Evidence of the corporation's business activities.

Annual Reports Some corporations submit annual reports as evidence of the corporation's ability to pay the proffered wage. Annual reports are only acceptable as evidence if they contain audited or reviewed financial statements.

Corporation's Ability to Pay The following table describes when a corporation may be able to establish the ability to pay.

If the Corporation's...	Is...	Then Ability to Pay Is...
Net income	= or > the proffered wage	Established
Net income	< the proffered wage	Not established
Net current assets	= or > the proffered wage	Established
Net current assets	< the proffered wage	Not established

Non-Profit Organizations

Definition A non-profit organization is one that is organized for a purpose other than generating a profit. They are also frequently referred to as "tax-exempt" organizations as many of them qualify for an exemption from federal and state taxation.

Limited Liability A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization. Though they may be personally sued if they did not deal with the organization “at an arms length” or as a disinterested third party would. Therefore, the organizers’ income, personal assets and liabilities may NOT be considered when trying to determine whether the non-profit can pay the beneficiary’s proffered wage.

Federal Informational Returns Most tax-exempt organizations (including private foundations) are required to file an annual informational return, called a Form 990 or 990EZ, Return of Organizations Exempt From Income Tax.

Tax-exempt organizations are required to file a yearly Form 990 or 990EZ if the organization’s gross receipts exceed \$25,000.00 from sources other than the exempt purpose. Most religious organizations are not required to file Form 990 or 990EZ, but many file them anyway in order to comply with state regulations.

Form 990 is organized very similarly to the Form 1120, U.S. Corporation Income Tax Return, and provides an abbreviated balance sheet as well as an analysis of excess revenue or (deficit) for the year.

The informational return provides certain information that is relevant to the non-profits’ ability to pay the proffered wage to include the:

- Date of incorporation, and;
- Presence of restricted and unrestricted funds, and;
- Evidence of the corporation’s business activities.

Annual Reports Some non-profits submit annual reports, as evidence of the non-profit’s ability to pay the proffered wage. Annual reports are only acceptable as evidence if they contain audited or reviewed financial statements.

Non-profit’s Ability to Pay The following table describes when a non-profit may be able to establish the ability to pay.

If the Non-profit’s...	Is...	Then Ability to Pay Is...
Net income	= or > the proffered wage	Established
Net income	< the proffered wage	Not established
Net current assets	= or > the proffered wage	Established
Net current assets	< the proffered wage	Not established

Uncharacteristic Financial Losses

Introduction There are some instances in which the petitioner experiences losses and has insufficient resources in the year of filing to pay the proffered wage, but the petitioning entity’s lack of profitability in that year was unusual for the business. In some instances, the petitioner may still demonstrate eligibility.

Matter of Sonegawa

Matter of Sonegawa, 12 I&N Dec. 612 (Reg. Comm. 1967) relates to petitions filed during uncharacteristically unprofitable or difficult years but only within a framework of profitable or successful years. In some instances, the petitioner may still demonstrate eligibility.

Therefore evidence of ability to pay should be determined over a period of time. One unprofitable year would not necessarily disqualify a petitioner's ability to pay. If they have previously demonstrated a record of profitability in years preceding and/or subsequent years.

Petitioner must Provide an Explanation and Documentary Evidence

While the petitioner may assert that the year of filing of the petition was an uncharacteristically unprofitable year, the record must contain documentary evidence that would show:

- Why the year in question was uncharacteristically unprofitable;
- That the petitioning entity had experienced a succession of profitable years prior to the year of filing; and
- That the petitioner's prospects for a resumption of successful business operations are reasonable and not simply based on the petitioner's assurances.

Please Note

The officer should not "invite" the petitioner to provide evidence that the year of filing was uncharacteristically unprofitable for the business. Additional evidence relating to this issue should only be requested if the petitioner brings it up as an issue without prompting from the Service.

Uncharacteristic Financial Losses Reference Chart

Chart

The following chart outlines the various types of petitioners encountered in ability to pay cases.

	Owner Liability	Existence Apart From Owners	Income Tax Rules and Forms	Can Personal Assets be Used?
Sole Proprietor	Unlimited Liability	No	Income Flows to Owner Schedule C	Yes
General Partnership	Unlimited Liability	No	Income Flows to Owners Form 1065 Schedule K	Yes
Limited Partnership	Limited to the Amount of the Investment	Separate Legal Entity	Income Flows to Owners Form 1065 Schedule K	No

Corporation	Limited to the Amount of the Investment	Separate Legal Entity	Taxed at Corp Level Form 1120 or Form 1120A	No
Subchapter S Corporation	Limited to the Amount of the Investment	Separate Legal Entity	Income Flows to Owner Form 1120S Schedule K	No
Tax Exempt Organization	Limited to the Assets of the Organization	No Owners – Assets Forever Dedicated to the Exempt Purpose	Form 990 or 990EZ No Return Unless Gross Receipts are >/= \$25,000.00. Churches May be Exempt From Filing	Only Org.'s Assets Can be Taken into Account

Addendum 3: Detecting I-140 Fraud or Misrepresentation

- Introduction** This section describes some of the fraud and misrepresentation indicators and approaches for I-140 petitions that might help reveal the presence of fraud or misrepresentation in the record.
- Officer's Responsibility** A request for additional evidence should be made when:
- The record contains evidence of material fraud or misrepresentation, or
 - The officer has knowledge of previous malafide petitions from the same petitioner.
- The petition should be denied when the petitioner cannot provide convincing, credible evidence or explanations that would overcome the evidence of material fraud or misrepresentation in the record.
- Adjudicative Approaches** There are a number of adjudicative approaches to take when there is a question of fraud or misrepresentation in the record.
- Systems Checks** There are several of electronic systems available to aid in the detection of fraud or misrepresentation including the following:
- Local CLAIMS
 - Mainframe CLAIMS
 - NIIS
 - CIS
 - IBIS

Name
Conventions
for CLAIMS,
NIIS, and CIS

The petitioner's name should be entered exactly as it appears on the petition with the exception of the words "Inc., Ltd., LLC, PLC, or Corp". In addition, the words "International and Group" are usually abbreviated to "Intl and Gr".

If the petitioner's name does not even bring up the petition that is being adjudicated, it might be helpful to wand in the receipt file number and see what conventions were used by Data Entry to enter the petition into CLAIMS.

The beneficiary's name and date of birth should be entered exactly as it appears on the petition. However, keep in mind that some countries list the day of the month before the month, so June 8, 1999 may be listed either as 06/08/1999 or 08/06/1999. In some instances it may be wise to try it both ways.

Asian first names may be listed in reverse order or the first name may or may not have a space in it. For example. Li Yu Wen may be Li Yu Wen, Liyu Wen, Yu Wen Li, or Yuwen Li.

Hispanic names may or may not use the first or second last name. For example, Maria Lopez Garcia may be Maria Lopez Garcia, Maria Lopez or Maria Garcia.

Local CLAIMS

Local CLAIMS can be accessed through the Status Inquiry screen. The database can be searched by the name of the petitioner or by the beneficiary's name. In addition, it may be helpful to search by the name of the foreign entity as foreign petitioners may try to file E13 petitions.

Local CLAIMS can identify the following information:

- The type and number of petitions and applications that have been filed;
- Whether any other petitions or applications have been pending, and;
- Whether the petitioner or the beneficiary has had previous denials or revocations of petitions and applications.

Mainframe
CLAIMS

Mainframe CLAIMS can be accessed through the National Systems and can provide the same information as local CLAIMS for all four Service Centers. In addition, it also provides information about petitions and applications filed at select district offices.

I-LINK

NIIS

NIIS can be accessed through the national systems and can provide information about the beneficiary's:

- Entries and departures from the U.S.;
- Method of entry, i.e. plane, car, etc.;
- POE or PFI used at the time of entry;
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and;
- Intended destination

There is usually a two to six month delay in entering records into NIIS. Also, be aware that NIIS only enters departures from the U.S. in the instances where the alien surrenders his or her Form I-94 at the time of departure.

If a search by Form I-94 # or Name and DOB does not produce a record, it may be helpful to search by the beneficiary's passport number. In addition, dated information may be archived in NIIS, so a search in the archive portion of NIIS may produce a better result.

CIS

CIS can be accessed through the national systems and can provide information about the beneficiary's alien registration number and his or her pending or completed adjustment, asylum, or removal proceedings.

Intent to Deny
Based on
Outright Fraud

Section 204(b) of the Act indicates that a petition may be approved "if the facts stated in the petition are true." Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The petitioner's submission of altered, forged or fraudulent documentation cast doubt on the remaining evidence offered in support of the petition. In short, the petitioner has gravely compromised his/her overall credibility. Such credibility may not be restored merely by disavowing the materials.

Page 8 of the I-140 petition form states, in pertinent part, "I certify under penalty of perjury under the laws of the United States of America that this petition, and the evidence submitted with in, is all true and correct." The petitioner signs his/her name under this declaration, thus assuming legal responsibility for the truth and accuracy of any and all information submitted in support of the petition. The petitioner violated this provision by submitting falsified evidence, and the Service is under absolutely no obligation to presume that this material is the only false documents in the record. Similarly, having proven that the petitioner has submitted false documents in support of a material assertion, the Service is not obligated to verify, document by document, the entire record of proceeding. In all cases, the burden is on the petitioner to demonstrate eligibility for the benefit sought. Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966).

The petitioner should be given an opportunity to offer evidence in rebuttal before a final decision is rendered.

Denials based
on
inconsistencies
in the record

Note: A case may be denied if conflicting information in the record has not been resolved after a request for evidence has been made of the petitioner. List each area of inconsistency by subject

The conflicting information has not been resolved. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

In all cases, the burden is on the petitioner to demonstrate eligibility for the benefit sought. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361.

Denials Based on Evidence which does not Establish Eligibility for the Benefit Sought.

If the evidence initially provided does not establish eligibility for the requested benefit, the petitioner should be sent a request for initial or additional evidence (RFE). The RFE should indicate what evidence was reviewed and explain why the evidence that was submitted is not sufficient.

If the petitioner fails to submit the requested initial or additional evidence, the adjudicator may deny the case because the evidence submitted does not establish eligibility for the benefit sought:

- If the initially submitted evidence provided is insufficient and additional evidence was not provided or is also insufficient after an RFE.
- The evidence provided is not credible without independent and corroborating evidence.
- If the requested original documentary evidence is not provided. 8 CFR 103.2(b)(5).

Primary evidence should be provided whenever possible but when unavailable secondary evidence can also be accepted. Doubtful primary evidence and secondary evidence should be supported by independent and or objective corroborating evidence whenever possible. When the credibility of the evidence is doubtful due to questionable photocopies a request for the original documents can be made. 8 CFR 103.2(b)(5)

Addendum 4: Evaluating Required Evidence

Introduction

Part A of Form ETA-750 will specify the work experience, training or skills that are required for the occupation.

The petitioner must provide evidence that the beneficiary possessed the training or work experience requirements noted in Part A of the certified ETA-750 as of the date of filing. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

Experience in the Position vs. Relating Experience

Part A of the Form ETA-750 will indicate whether the beneficiary's qualifying work experience must be in a specific occupation or if it can be in a related field.

If Part A...	Then the Qualifying work experience...
Identifies a specific occupation in which the beneficiary must have had qualifying work experience	Must be in the specific occupation identified.
Does not identify a specific occupation in which the beneficiary must have had qualifying work experience	Can be either in the position offered or in a relating position.

Required Evidence of Training or Work Experience	<p>As evidence of the beneficiary's training or work experience, the petitioner must provide letters from trainers or employers that identify:</p> <ul style="list-style-type: none"> • The name, address, and title of the trainer or employer; and • A specific description of the training received or the duties performed. <p>[See 8 CFR 204.5(g)(1) and 8 CFR 204.5(l)(3)(ii)]</p> <p>The letters must provide specific detail regarding the beneficiary's qualifying training or work experience and the date and duration of his or her employment or training. Letters that merely indicate the dates of employment or training and the job title are not normally considered to be credible evidence of the beneficiary's qualifications.</p>
Resumes and ETA-750, Part B DOES NOT = Evidence of the Beneficiary's Qualifications	<p>The beneficiary's resume and Part B of the Form ETA-750 may describe the beneficiary's prior work experience, training or licensure. In addition, affidavits from the beneficiary may be submitted. However, none of these documents are considered to be credible, documentary evidence for the purpose of demonstrating the beneficiary's eligibility for the classification.</p>
Evidence of Training	<p>Evidence in addition to a specific description of the relevant training that the beneficiary has received may include, but is not limited to:</p> <ul style="list-style-type: none"> • Course transcripts or report cards; • Tuition bills that itemize the courses to be taken; and • Course descriptions.
Evidence of Licensure	<p>The petitioner is not necessarily required to show that the beneficiary holds specific licenses identified in Part A of the Form ETA-750 in order to perform the duties of the occupation.</p> <p><u>Matter of Maher</u>, 12 I&N Dec. 680 (Reg. Com. 1968) states that the alien does not have to establish that he will be eligible to practice his profession immediately upon admission to the United States - only that he is otherwise qualified as a professional and has a bone fide intent to practice his profession in the United States, notwithstanding any other studies that may be needed to perform the duties in this country.</p> <p>If an alien possesses all other requirements necessary to qualify for his profession and can take any additional licensing requirements once he arrives in the United States then this requirement is satisfied.</p>
Foreign Medical School Graduates	<p>Section 212(a)(5)(B) Act requires that certain foreign medical school graduates pass an examination before they can be admitted under sections 203(b)(2) or 203(b)(3) of the Act. However, Headquarters has determined that if the petition is filed with an approved alien labor certification, evidence, which demonstrates that the beneficiary has passed the requisite examinations, is not required, as the DOL is required to address this issue. [See 20 CFR 656.20(d)(1) and the HQ memo, Immigration of Foreign Medical School Graduates, U.S. CIS Office of Programs, Dated September 6, 1994]</p>

Evidence of Specific Skills If Part A of the Form ETA-750 indicates that special skills must be possessed by the beneficiary in order to perform the duties of the occupation, then the petitioner must provide credible documentary evidence that would establish how and when the beneficiary obtained the skill.

Required Post-Secondary Education

Introduction Part A of the Form ETA-750 will specify the post-secondary education that is required for the occupation.

The petitioner must provide evidence that the beneficiary possessed the post-secondary education requirements noted in Part A of the certified ETA-750 as of the date of filing. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

Required Education As evidence of the beneficiary’s qualifying post-secondary education, the petitioner must provide an official college or university record, showing the date upon which a degree was awarded, if any, and the area of concentration of study. [See 8 CFR 204.5(l)(3)(ii)(C)]

Post-Secondary Education vs. Related Training or Experience Part A of the Form ETA-750 will indicate whether the beneficiary must possess specific post-secondary education or whether work experience or training may be substituted.

If Part A...	Then the Qualifying work experience...
Identifies that work experience or other training may be used as a substitute for the specified post-secondary education	May be used as a substitute for the specified post-secondary education
Does not identify that work experience or other training may be used as a substitute for the specified post-secondary education	May NOT be used as a substitute for the specified post-secondary education

Note: In the instance where the Department of Labor certification specifies a “bachelor’s degree” or “bachelor’s degree or equivalent” is required, where “equivalent” is not defined on the labor certification, the alien must have a bachelor’s degree or a foreign equivalent degree. In this case, the petition must be adjudicated as an E-32 petition. The petition should not be treated as a request for E-31 classification.

Foreign Equivalent Degree If the beneficiary’s education has been obtained abroad, the petitioner must established that the beneficiary’s foreign academic credentials are equivalent to education obtained at an accredited institution of higher learning in the United States.

Required Evidence of Training or Work Experience As evidence of the beneficiary’s training or work experience, the petitioner must provide letters from trainers or employers that identify:

- The name, address, and title of the trainer or employer, and
- A specific description of the training received or the duties performed.

[See 8 CFR 204.5(g)(1) and 8 CFR 204.5(l)(3)(ii)(B)]

The letters must provide specific details regarding the beneficiary’s qualifying training or work experience and the date and duration of the employment or training. Letters that merely indicate the dates of employment or training and the job title are not normally considered to be credible evidence of the beneficiary’s qualifications.

Addendum 5: NIW Physicians

Description This document outlines the criteria and evidentiary requirements that must be considered in the adjudication of certain national interest waiver (NIW) physician petitions.

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Background

Introduction The purpose of this document is to outline the criteria and evidentiary requirements that must be considered in the adjudication of certain national interest waiver (NIW) physician petitions.

History Since the enactment of the IMMACT 90 legislation that made provision for the granting of NIWs under section 203(b)(2) of the Act, the Service granted NIWs to physicians who planned to provide primary medical care in medically under-served areas.

In Matter of New York State Dept of Transportation, Int. Dec. 3363 (Act. Assoc. Comm., 1998), however, the AAO held that the alleged shortage of available workers could not be the basis for granting a national interest waiver, since the labor certification process itself is the proper way to determine labor shortages. After this decision, it was not clear approval of NIWs was appropriate for physicians planning to provide primary medical care in medically under-served areas. The enactment of section 5 of the Nursing Relief Act of 1999 legislated a means by which NIWs and ultimately adjustment of status could be granted to certain physicians, but only if a number of conditions were met.

Section 5, Nursing Relief Act	<p>On November 12, 1999, the President approved enactment of the Nursing Relief for Disadvantaged Areas Act of 1999, Public Law 106-95. Section 5 of the legislation amended section 203(b)(2) of the Act and established special rules for requests for NIWs for certain physicians who are willing to work in medically under-served areas or in VA facilities.</p> <p>The Consolidations Appropriations Act, 2000, Public Law 106-113, enacted on November 29, 1999, included an essentially identical amendment to the section 203(b)(2) of the Act. Since the two versions of the new provision were essentially the same, the Service adopted November 12, 1999, as the effective date, so as to make the benefit more broadly available.</p>
U.S. CIS Interim Rule	<p>On September 6, 2000, the Service published in the Federal Register at 65 <i>Fed. Reg.</i> 53, 889, an interim rule governing NIWs for physicians willing to serve in medically under-served areas or in VA facilities.</p>
Statute and Interim Rule Only Applies to Certain Physicians	<p>The newly enacted statute amending section 203(b)(2) of the Act and the associated interim rule only applies to physicians who are seeking a NIW on the basis of an intent to provide primary care medical services in areas that are medically under-served or at VA facilities.</p> <p>Those physicians that are seeking a NIW by virtue of some other basis, such as the national impact of their clinical research, are not eligible for a NIW under the amended statute and the interim rule. <u>Matter of NY State Dept. of Trans.</u>, Int. Dec. 3363, continues to govern those cases.</p>

General Requirements

E21 Classification	<p>Any alien physician (namely doctors of medicine and doctors of osteopathy) for whom an I-140 petition is filed requesting the E21 classification with a request for a NIW may qualify if certain conditions are met.</p>
E21 Eligibility Requirements	<p>All petitioners and self-petitioners must meet all of the eligibility requirements found in 8 CFR 204.5(k)(1) through (k)(3). In addition, all of the following general eligibility requirements must be met.</p>
5 years of Full- time Clinical Practice	<p>The physician must agree to work full-time (40 hours per week) in a clinical practice in a qualifying geographic area for an aggregate of five years (not including any time served in J1 nonimmigrant status).</p>
Exception (Petitions filed before 1/1/98)	<p>If the petitioner filed the I-140 before November 1, 1998, and the petition was still pending on November 12, 1999, then three, rather than five, years of full-time (40 hours per week) clinical practice in a qualifying geographic area is sufficient (not including any time served in J1 nonimmigrant status).</p> <p>This exception will be discussed in depth in the "Petitions filed prior to November 12, 1999" portion of this document.</p>

Qualifying Geographic Areas

The following table outlines the geographic areas where the physician may practice. [8 CFR 204.12]

If the proposed service is...	Or...	And...
<p>In a geographical area or areas designated by the Secretary of Health and Human Services (HHS) as a:</p> <ul style="list-style-type: none"> ▪ Medically Under-served Area ▪ Primary Medical Health Professional Shortage Area, or a ▪ Mental Health Professional Shortage Area <p>The area of medical specialty must be within the scope of the Secretary's designation for the geographical area or areas.</p>	<p>At a health care facility under the jurisdiction of the Secretary of Veterans Affairs (VA).</p>	<p>A federal agency or the department of public health of a state, territory of the U.S. or the District of Columbia previously determines that the physician's work in that area or facility is in the public interest.</p>

Acceptable Areas of Practice

While the statute language says "any physician," the HHS currently limits physicians in designated shortage areas to the practice of:

- Family or general medicine
- Pediatrics
- General internal medicine
- Obstetrics/gynecology
- Psychiatry

Unless HHS establishes shortage areas for other fields of medicine, only these fields of medicine are covered by this rule.

Time Limits

The following table outlines the timeline within which the physician must complete the aggregate of five years of qualifying full-time clinical practice.

If the physician...	Then the physician must complete the aggregate of five years of qualifying clinical practice during the six-year period beginning on the date...
Already has authorization to accept employment (other than as a J1 nonimmigrant)	Of approval of the Form I-140.
Must obtain work authorization before he or she can lawfully begin working	The Service issues the necessary employment authorization document.

241(1) If the physician formerly held status as a J1 nonimmigrant, but has obtained a waiver of the foreign residence requirement and a change of status to H1B pursuant to section 241(1) of the Act, the Service will include the alien's compliance with the 3-year period of service required under section 241(1) in calculating the period of clinical practice required under section 203(b)(2)(b)(2)(B)(ii)(II) of the Act.

Physicians Fulfilling H-1B Medical Service Requirement Adjustment of status applications from alien physicians who are beneficiaries of I-140s with a NIW request and who are fulfilling a three-year medical service requirement in H-1B status pursuant to section 214(l) of the Act should be accepted. [HQ 70/6.1.3-P]

212(e) Waivers The requirements of section 203(b)(2)(B)(ii) of the Act are not exactly the same as the requirements of section 212(e) of the Act. The approval of an NIW does not relieve the physician from any foreign residence requirement that he or she may have under section 212(e). In fact, the interim regulation requires, if the physician is subject to the foreign residence requirement because he or she was a J-1 nonimmigrant receiving medical training in the U.S., the petitioner must submit with the I-140 evidence that the physician has already obtained a waiver of the foreign residence requirement.

Evidentiary Requirements

Introduction As with any E21 petition, all petitioners and self-petitioners must provide evidence that all of the eligibility requirements found in 8 CFR 204.5(k)(1) through (k)(3) have been met. In addition, specific evidence relating to the request for a NIW must be submitted.

Please Note If the physician plans to divide the practice of full-time clinical medicine between more than one under-served areas, specific evidence relating to the request for a NIW must be submitted for each area of intended practice.

Evidence of Intended Employment The following table describes the evidence of intended employment that must be provided.

If the physician will...	
Be an employee then...	Establish a practice then...
A full-time employment contract for the required period of clinical practice, or an employment commitment letter from a VA facility must be submitted. The contract or letter must have been issued and dated within 6 months prior to the date of filing of the petition.	The physician's sworn statement committing to the full-time practice of clinical medicine for the required period, and describing the steps the physician has taken or intends to actually take to establish the practice must be submitted.

Evidence Relating to the Geographic Area or Areas	<p>The petitioner must provide evidence that the geographic area or areas in which the beneficiary is to be employed on a full-time basis:</p> <ul style="list-style-type: none"> ▪ Has been designated by the Secretary of HHS as having a shortage of health care professionals and that the physician's area of practice is within the scope of the Secretary's shortage designation for that area; or ▪ Is in a facility under the jurisdiction of the Secretary of VA.
Evidence that the Proposed Employment is in the Public Interest	<p>A letter (issued and dated within 6 months prior to the date on which the petition is filed) from a federal agency or from the Department of Health (or equivalent) of a state, territory of the U.S. or the District of Columbia attesting that the physician's work is in the public interest must be submitted. The letter must reflect that the agency has jurisdiction over the place where the physician intends to practice clinical medicine, and cannot be from a local municipality.</p>
Attestations	<p>The attestation must reflect the agency's knowledge of the alien's qualifications and the agency's background in making determinations on matters involving medical affairs so as to substantiate the finding that the physician's work is or will be in the public interest.</p>
212(a)(5)(B)	<p>The physician must meet the admissibility requirements established by section 212(a)(5)(B) of the Act, relating to examinations that immigrant physicians must pass in order to immigrate.</p> <p>The petitioner must provide evidence that the beneficiary has passed parts I and II of the National Board of Medical Examiners Examination (NBME) or an equivalent examination as determined by the Secretary of Health and Human Services (HHS), and evidence that the beneficiary is competent in oral and written English.</p> <p>Examinations that are equivalent to the NBME include the:</p> <ul style="list-style-type: none"> ▪ Visa Qualifying Examination (VQE) ▪ Comprehensive Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) ▪ U.S. Medical Licensing Examination (USMLE) <p>A possible form of evidence of competency in oral and written English is an Educational Commission for Foreign Medical Graduates (ECFMG) certification showing the beneficiary has passed the English language proficiency test.</p>

212(e) If the physician was subject to the foreign residence requirement because of his or her admission as a J-1 nonimmigrant receiving medical training in the U.S., the petition must include evidence that the Service has granted a waiver of the foreign residence requirement.

Note: Effective February 27, 2002, the U.S. Department of Agriculture (USDA) will no longer sponsor the issuance of H-1B and J-1 visas for foreign research scientists, nor will the USDA serve as an Interested Government Agency in submitting recommendations for waiver of the two-year foreign residence requirement. [Letter from USDA Deputy Secretary James R. Moseley to U.S. CIS Commissioner James W. Ziglar, received February 27, 2002.]

Introduction In some instances, the physician may wish to change employers and/or work in a different geographic area subsequent to the approval of the I-140 petition. Physicians in receipt of an approved Form I-140 with an NIW based on full-time clinical practice in a designated shortage area and a pending I-485 may apply to the Service if he or she is offered new employment to practice full-time in another under-served area of the U.S.

An Approved Change will not Extend the 6 year time limit An approved change of practice to another under-served area does not constitute a new 6-year period of time in which the physician must complete the aggregate five years of clinical practice.

New Employer A new employer may file an I-140 petition with fee and all of the required evidence, including a copy of the approval notice from the initial I-140 petition.

The beneficiary will retain the priority date from the initial petition and upon approval the new I-140 petition will be matched with the pending I-485.

New Practice If the physician intends to establish his or her own practice, the physician must submit a new I-140 petition with fee and all of the required evidence, including a copy of the approval notice from the initial I-140 petition.

The beneficiary will retain the priority date from the initial petition and upon approval the new I-140 petition will be matched with the pending I-485.

Clinical Practice Time Served will be Calculated by the Service The petitioner will provide evidence of the date of termination of the beneficiary's prior employment. The Service will calculate the amount of time the physician was between employers/practices so as to adjust the count of aggregate time served in the under-served area.

Petitions filed Prior to November 12, 1999

I-LINK

Introduction	In order to make the benefit of new section 203(b)(2)(B) as widely available as possible, the interim rule fixes November 12, 1999, as the proper effective date. The following guidance outlines how pending petitions will be treated in light of the new statute and interim rule.
Petitions Filed on or after November 12, 1999	<p>For petitions filed on or after November 12, 1999, the Service will approve a NIW provided the petitioner submits the necessary documentation to satisfy the requirements of section 203(b)(2)(B)(ii) of the Act and the interim rule, and the physician is otherwise eligible for the E21 classification.</p> <p>The granting of the NIW does not relieve the physician from any requirement other than that of fulfilling the labor certification process.</p>
Petitions Pending on November 12, 1999	<p>Section 203(b)(2)(B)(ii) of the Act applies to all petitions that were pending adjudication as of November 1, 1999, before a Service Center, the AAO, or before a Federal court.</p> <p>Petitioners whose petitions were pending on November 12, 1999, will not be required to submit a new petition, but may be required to submit supplemental evidence. The requirement that supplemental evidence be issued and dated within 6 months prior to the date upon which the petition is filed is not applicable to petitions that were pending as of November 12, 1999.</p> <p>If the case was pending before the AAO or a Federal court on November 12, 1999, the petitioner should ask for a remand to the proper Service Center for consideration of this new evidence.</p>
Petitions Denied on or after November 12, 1999	The Service Center or the AAO shall reopen any petition affected by the provision of section 203(b)(2)(B)(ii) of the Act that the Service denied on or after November 12, 1999, but prior to October 6, 2000, the effective date of the interim rule.
Petitions Filed Prior to November 1, 1998, and Pending as of November 12, 1999	<p>For petitions filed prior to November 1, 1998, and still pending as of November 12, 1999, the Service will approve a NIW provided the petitioner fulfills the evidentiary requirements specified in the interim rule.</p> <p>Physicians that are beneficiaries of pre-November 1, 1998, petitions are only required to work full-time as a physician practicing clinical medicine for an aggregate of three years, rather than five years, not including time served as a J1 nonimmigrant.</p>
Time Limits	The following table outlines the timeline within which the pre-November 1, 1998 beneficiary physician must complete the aggregate of three years of qualifying full-time clinical practice.

If the physician...	Then the physician complete the aggregate of three years of qualifying clinical practice during the four-year period beginning on the date...
Already has authorization to accept employment (other than as a J1 nonimmigrant)	Of approval of the Form I-140.
Must obtain work authorization before he or she can lawfully begin working	The Service issues the necessary employment authorization document.

Petitions Filed and Approved Before November 12, 1999

A physician who obtained approval of an E21 petition and a NIW before November 12, 1999, is not subject to the service requirements imposed in section 203(b)(2)(B)(ii) of the Act.

Petitions Denied Prior to November 12, 1999

If a Service decision denying a NIW became administratively final before November 12, 1999, the petitioner or self-petitioner must file a new Form I-140 petition, accompanied by the evidence required in the interim rule in order to obtain the benefit.

Motions Filed for Petitions that were Denied Prior to November 12, 1999, Must Be Denied

The Service must deny any motion to reopen or reconsider a decision denying an immigrant petition if the decision became final before November 12, 1999.

The denial of any motion will be without prejudice to the filing of a new visa petition with a request for a NIW that comports with section 203(b)(2)(B)(ii) of the Act.

Addendum 6: IRS Tax Forms

Introduction

The following section included tax forms that are referenced within the SOP. The following forms are included within this section:

- Form 1040 – Schedule C
- Form 1040 - Schedule C - Instructions
- Form 1120
- Form 1120 - Instructions
- Form 1120S
- Form 1120S - Instructions
- Form 1065
- Form 1065 - Instructions
- Form 990
- Form 990 - Instructions

Each form listed was issued as the 2001 version of the respective form.

I-LINK

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I-140 NATIONAL SOP: SECTION 6: POST-ADJUDICATIONS MODULE

Section 6: Post-Adjudications

I-140 Table of Contents The following is a table of contents, which serves as a guide for all six modules of the I-140 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center.

Introduction This section outlines the procedure to be followed after an officer makes a determination on an I-140 case. The determination as to who (officer, clerk or contractor) will perform these functions is left to local management discretion. The following procedure does not include the process for Motions and Appeals.

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Part 1: Updating CLAIMS

Requirement CLAIMS data that pertains to the case must be reviewed and a decision entered into the system for **ALL immigrant classifications**.

Standards - To begin updating CLAIMS, complete the following standards.
Updating CLAIMS

No.	Standard
1.1	Log into CLAIMS LAN. Select "Adjudicate a Case."
1.2	At the "Enter a receipt or A-number" prompt, wand the case's barcode.
1.3	<p>Review the following data in CLAIMS against the petition for accuracy and make changes if necessary:</p> <ul style="list-style-type: none"> • Employer and petition data • Classification (see Part 2 of the screen) • Beneficiary data <p>Note: If you make changes, press <F4> to save.</p>
1.4	<p>If there is a valid G-28, review the attorney/representative data for accuracy and make changes if necessary. If the information from a valid G-28 has not been entered, enter "Y" in the "G-28" field and input the data. If making changes, press <F4> to save the data.</p> <p>Advice: To access the attorney/representative sub-screen, <Tab> or use the down arrow to get to the "G-28" field, ensure there is a "Y" in the field and press <Enter>.</p>
1.7	Press <F10> and refer to the appropriate part of this module (i.e., Part 1a, 1b, 1c, 1d, 1e, or 1f) depending on the decision or action being updated.

Part 1a: Processing Approvals

Standards - If processing an Approval, complete the following standards:
 Processing Approvals

1a.1	Select "Approve the Case."						
1a.2	If the case is being certified to the AAO, select "Approve and Certify – Order Notice;" otherwise select "Approve – Order Notice."						
1a.3	At the "Approval Data" screen, select the proper action phrase (see addendum) and press <Enter> twice.						
1a.4	Type the class and press <Enter>.						
1a.5	Type the priority date in mm/dd/yyyy format (the system automatically advances to successive fields).						
1a.6	Leave the consulate field blank.						
1a.7	Type the job code into the "job code" field or press <Insert> twice and select the job code. Press <Enter>.						
1a.8	<p>Advance to the "Send to Clerical? (Y/N)" field. Leave the "N" (the system default) unless the instructions below for selecting the action phrase direct otherwise. If you leave the "N," the system will automatically generate the notice and it will be sent out.</p> <p>Note: If the petitioner has provided means for expedited delivery of the approval notice, original documents, etc. (e.g., FedEx envelope) or it is your center's practice to return original documents with the system-generated notice, you must select "Y" and generate a manual notice.</p> <table border="1" data-bbox="386 1234 1206 1413"> <thead> <tr> <th>IF you selected...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>"N"</td> <td>Continue processing.</td> </tr> <tr> <td>"Y"</td> <td>Do not complete any additional standards in this section. Advice: Proceed to "Producing a Manual Notice."</td> </tr> </tbody> </table>	IF you selected...	THEN...	"N"	Continue processing.	"Y"	Do not complete any additional standards in this section. Advice: Proceed to "Producing a Manual Notice."
IF you selected...	THEN...						
"N"	Continue processing.						
"Y"	Do not complete any additional standards in this section. Advice: Proceed to "Producing a Manual Notice."						
1a.9	<p>Save and exit the approval screen.</p> <p>Advice: To save and exit, complete the following:</p> <ul style="list-style-type: none"> • Press "F4" • At the "Save Changes?" prompt, select "Yes" • At the "Change Case Status?" prompt, select "Yes" • At the "Press escape to continue" prompt, press "Esc" • At the petition main screen, press "Esc" • At the "Exit Form?" prompt, select "Yes" 						

1a.10	If the case is being approved following a RFE, ensure that the copy of the RFE in the file is placed with the other supporting documents below the petition.
-------	--

Part 1b: Processing Denials

Standards - Processing Denials If processing a Denial, complete the following standards:

No.	Standard						
1b.1	Select "Deny the Case."						
1b.2	<p>If processing a "Regular Denial," enter the proper action phrase according to the table below, and then press <Enter> twice.</p> <table border="1"> <thead> <tr> <th>IF the case is...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>Being denied without certification to AAO</td> <td>Select the phrase "Order Denial Notice."</td> </tr> <tr> <td>Being denied with certification to AAO</td> <td>Select the phrase "Order Denial and Certification Notice."</td> </tr> </tbody> </table>	IF the case is...	THEN...	Being denied without certification to AAO	Select the phrase " Order Denial Notice. "	Being denied with certification to AAO	Select the phrase " Order Denial and Certification Notice. "
IF the case is...	THEN...						
Being denied without certification to AAO	Select the phrase " Order Denial Notice. "						
Being denied with certification to AAO	Select the phrase " Order Denial and Certification Notice. "						
1b.3	<p>If processing a "Denial Based on Fraud," enter the proper action phrase according to the table below, and then press <Enter> twice.</p> <table border="1"> <thead> <tr> <th>IF the case is...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>Being denied without certification to AAO</td> <td>Select the phrase, "Order Denial Notice with Finding of Fraud."</td> </tr> <tr> <td>Being denied with certification to AAO</td> <td>Select the phrase, "Order Denial and Certification Notice-Fraud."</td> </tr> </tbody> </table>	IF the case is...	THEN...	Being denied without certification to AAO	Select the phrase, " Order Denial Notice with Finding of Fraud. "	Being denied with certification to AAO	Select the phrase, " Order Denial and Certification Notice-Fraud. "
IF the case is...	THEN...						
Being denied without certification to AAO	Select the phrase, " Order Denial Notice with Finding of Fraud. "						
Being denied with certification to AAO	Select the phrase, " Order Denial and Certification Notice-Fraud. "						
1b.4	If processing an "Abandonment Denial," select the action phrase, " Order Abandonment Denial Notice, " And then press <Enter> twice.						

1b.5	<p>If a petition was approved in error, enter the proper phrase according to the table below.</p> <table border="1"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>The approval notice has not gone out</td> <td>Update CLAIMS with "Previous Action Cancelled." Exit out of the record by pressing the "Esc" button. Important: Retrieve the erroneous approval notice in accordance with local policy.</td> </tr> <tr> <td>The approval notice has gone out</td> <td>Select the phrase, "Intent to Revoke Notice Ordered," And then press <Enter> twice.</td> </tr> </tbody> </table>	IF...	THEN...	The approval notice has not gone out	Update CLAIMS with " Previous Action Cancelled. " Exit out of the record by pressing the "Esc" button. Important: Retrieve the erroneous approval notice in accordance with local policy.	The approval notice has gone out	Select the phrase, " Intent to Revoke Notice Ordered, " And then press <Enter> twice.
IF...	THEN...						
The approval notice has not gone out	Update CLAIMS with " Previous Action Cancelled. " Exit out of the record by pressing the "Esc" button. Important: Retrieve the erroneous approval notice in accordance with local policy.						
The approval notice has gone out	Select the phrase, " Intent to Revoke Notice Ordered, " And then press <Enter> twice.						

1b.6	Continue processing as appropriate. Advice: Proceed to “Updating CLAIMS After Manual Notices are Sent.”
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Part 1c: Processing Non-Decision Actions

Standards - Processing Non-Decision Actions If processing a non-decision action, or Suspense Action (i.e., Requests for Evidence and Intents to Deny) complete the following standards:

No.	Standards
1c.1	Select “Case Review” and then “Place in Suspense.”
1c.2	If evidence is being requested, select the action phrase, “ Order Additional Evidence Request Notice ,” and then press <Enter> twice. Note: Do not use the action phrases “Order Initial Evidence Request Notice” or “Order Initial and Additional Evidence Request Notice.”
1c.3	If an Intent to Deny is being issued, select the action phrase, “ Intent to Deny Notice Ordered ,” And then press <Enter> twice.
1c.4	Continue processing as appropriate. Advice: Proceed to “Updating CLAIMS After Manual Notices are Sent.”

Part 1d: Processing Non-Decision Actions at the Texas Service Center (TSC)

Standards - Processing Non-Decision Actions at the TSC If processing a Non-Decision Action at the TSC, complete the following standards:

Note: Due to differences in staffing at the Texas Service Center, U.S. CIS staff at the TSC should follow the standards as they appear below to process non-decision actions (e.g., Intents to Deny or Requests for Evidence).

No.	Standards				
1d.1	Access the CLAIMS main menu.				
1d.2	Select “Batch Case Status Update” and then select “Batch Off System Notice Sent Update.”				
1d.3	Select the appropriate phrase and then press <Enter>. <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>Processing a Request for Evidence</td> <td>Select the phrase, “Request for Evidence Sent.”</td> </tr> </tbody> </table>	IF...	THEN...	Processing a Request for Evidence	Select the phrase, “ Request for Evidence Sent. ”
IF...	THEN...				
Processing a Request for Evidence	Select the phrase, “ Request for Evidence Sent. ”				

	Processing an Intent to Deny	Select the phrase, " Notice of Intent to Deny Sent. "
	Processing an Intent to Revoke	Select the phrase, " Notice of Intent to Revoke Sent. "
1d.4	Wand each receipt number to be updated with the selected phrase and then press <Esc> three times.	
1d.5	Select "RAFACS" and then select "USERS." RAFACS each file (receipt number) to the designated file room holding area.	

Part 1e: Processing Amended Notices

Standards - If an approval notice is incorrect, DUE TO SERVICE ERROR, and there is a
 Processing need to amend the notice, complete the following standards for Amended
 Amended Notices.
 Notices

No.	Standard
1e.1	Correct and save the information in CLAIMS.
1e.2	Print the "Approval Data" screen and place it on the right side of the case file.
1e.3	Update the case with a "Y" and proceed appropriately. Advice: Go to "Producing a Manual Notice."

Part 1f: Processing Revocations

Standards - If processing a Revocation, complete the following standards:
 Processing
 Revocations

No.	Standard						
1f.1	Select "Revoke the Case."						
1f.2	Select the proper action phrase and then press <Enter> twice. <table border="1" data-bbox="386 1440 1206 1650" style="margin-left: 20px;"> <thead> <tr> <th>IF...</th> <th>THEN...</th> </tr> </thead> <tbody> <tr> <td>Processing a "Regular Revocation"</td> <td>Select the phrase, "Order Revocation Notice."</td> </tr> <tr> <td>Processing a "Revocation Based on Fraud"</td> <td>Select the phrase, "Order Revocation Notice with Finding of Fraud."</td> </tr> </tbody> </table>	IF...	THEN...	Processing a "Regular Revocation"	Select the phrase, " Order Revocation Notice. "	Processing a "Revocation Based on Fraud"	Select the phrase, " Order Revocation Notice with Finding of Fraud. "
IF...	THEN...						
Processing a "Regular Revocation"	Select the phrase, " Order Revocation Notice. "						
Processing a "Revocation Based on Fraud"	Select the phrase, " Order Revocation Notice with Finding of Fraud. "						
1f.3	Proceed appropriately. Advice: Proceed to "Updating CLAIMS after Manual Notices are Sent."						

Part 2: Producing Notices

Part 2a: Producing a Manual Notice

Description Manually generated notices are produced when documents are returned in the same envelope as the CLAIMS generated notice, when amended notices are sent and under special circumstances.

Requirement A manually-generated CLAIMS notice should be generated when:

- Returning documents in the same envelope as the CLAIMS-generated notice;
- Sending an amended notice; or
- Special circumstances warrant it.

Standards - Producing a Manual Notice To produce a manual CLAIMS notice, follow these standards:

No.	Standard
2a.1	Access the CLAIMS Clerical main menu.
2a.2	Select "Printing menu."
2a.3	Select "Print Notices" or "Print Amended Notices" as appropriate.
2a.4	Wand the file's barcode label and press <F4>.
2a.5	Put the system-generated notice and the word processing-generated (if any) together and follow outgoing mail procedures. Note: If there is a note or form providing clerical processing instructions, place it on the right side of the file.

Part 2b: Updating CLAIMS after Manual Notices are Sent

Standards - Updating CLAIMS after Manual Notices are Sent Once the word processing-generated denial, the Request for Evidence, the Intent to Deny, or the Intent to Revoke correspondence has been produced, follow these standards to update the case to reflect that the notice(s) has/have been sent:

No.	Standard
2b.1	Access the CLAIMS Clerical main menu.
2b.2	Select "Batch status update."
2b.3	Select "Batch Off-System Notice Sent Update."
2b.4	Select the appropriate phrase. Note: Before you can update CLAIMS with " DENIAL NOTICE—SENT, " you must release the supervisory hold. To do so, press "Alt-F8," type your user ID and password and press F4.

2b.5	If a decision is being made following a RFE, ensure that the RFE in the file is placed with the other supporting documents below the petition.
------	--

Part 3: Distributing Work After Updating CLAIMS

Approvals	If adjustment of status (AOS) is requested, route to A-file creates. If consulate processing is requested, route to mailroom for shipping to the National Visa Center (NVC).
	Note: Effective 12/7/01, all EW3 cases are not required to be sent to NVC. Instead, retain the petition at the service center, unless consular processing was explicitly requested by the petitioner.
RFEs	Route the file to the appropriate file room to be placed in the hold area for 87 days, grouped with others files that had RFEs sent on the same date.
Intent	Route the file to the appropriate file room to be placed in the hold area for 33 days, grouped with others files that had Intent
Denials	Route to A-file creates. Hold the case for 33 days. If no appeal is filed, ship the file to the National Records Center (NRC).
Revocations	If the case is in a receipt file, route it to A-file creates, then send it to the hold shelf for 18 days. If the case is in an A-file, route it to the hold shelf for 18 days. If no appeal is filed, the file is routed to the NRC.

Addendum: Action Phrases and Print Options

Action Phrases, General	To view the actual language associated with a decision phrase on the notice, put the cursor on the phrase and press <F3>.
Approved – Petition stored in office	The petition has been approved. The approved petition will be stored in this office. If the person for whom you are petitioning is or becomes eligible to apply for adjustment of status, he or she should submit a copy of this notice with Form I-485, Application for Permanent Residence. Additional information about eligibility for adjustment of status may be obtained from the local U.S. CIS office serving the area where he or she lives. If the person for whom you are petitioning decides to apply for an immigrant visa outside the United States based upon this petition, the petitioner should file Form I-824, Application for Further Action on an Approved Application or Petition, with this office to request that we send the petition to the U.S. consulate.
Notifying Multiple Consulates/ POE/ PFI	Notification of multiple consulates is performed ONLY when the petitioner submits an I-824 requesting notification of an additional consulate.

Requested consulate; sent to NVC w/ cable	The petition has been approved. We have sent a cable to the consulate listed above to notify them of the approval of the petition. We have sent the petition to the US Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909 – NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate. – This completes all U.S. CIS action on this petition. If you have any questions about visa issuance, please contact the NVC directly. The telephone number to NVC is (603) 334-0700. Please allow 90 days before contacting the National Visa Center regarding your petition. – The NVC will contact the person for whom you are petitioning concerning further immigrant visa processing steps.
Will be notified separately on pending I-485	The above petition has been approved. The person this petition is for will be notified separately when a decision is reached on his or her pending adjustment of status application.
Indicated would Adjust Status; clearly ineligible	The above petition has been approved. The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status. The evidence indicates that he or she is not eligible to file an adjustment of status application. This determination is based on the information submitted with the petition and any relating files. If the person for whom you are petitioning believes that he or she is eligible for adjustment of status, then he or she should contact the local U.S. CIS office for more information. – Because the person for whom you are petitioning is not eligible to adjust, we have sent the approved petition to the U.S. Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909. The NVC processes all approved immigrant visa petitions that need consular action and also determines which consular post is the appropriate consulate to complete visa processing. The NVC will then forward the approved petition to that consulate. – This completes all U.S. CIS action on this petition. If you have any questions about visa issuance, please contact the NVC directly. The telephone number to NVC is (603) 334-0700.

Adjust status; not eligible now, not barred	The above petition has been approved. The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status. The information submitted with the petition shows that the person for whom you are petitioning is not eligible to file an adjustment of status application at this time. – Additional information about eligibility for adjustment of status may be obtained from the local U.S. CIS office serving the area where the person for whom you are petitioning lives. – Until the person for whom you are petitioning files an adjustment of status application, or applies for an immigrant visa, this approved petition will be stored in this office. If the person for whom you are petitioning becomes eligible to adjust status based on this petition, he or she should submit a copy of this notice with Form I-485, Application for Permanent Residence, to the local U.S. CIS office. – If the person for whom you are petitioning decides to apply for an immigrant visa outside the United States based on this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center.
Indicated would adjust status; appears eligible	The above petition has been approved. The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status. He or she should contact the local U.S. CIS office to obtain Form I-485, Application for Permanent Residence. A copy of this notice should be submitted with the application. – If the person for whom you are petitioning decides to apply for a visa outside the United States based on this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center (NVC). – The NVC processes all approved immigrant visa petitions that require consular action. The NVC also determines which consular post is the appropriate consulate to complete visa processing. It will then forward the approved petition to that consulate.
Requested send to consulate – sent to NVC	The above petition has been approved. We have sent it to the US Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801—2909. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. The NVC will then forward the approved petition to that consulate. – This completes all U.S. CIS action on this petition. If you have any questions about visa issuance, please contact the NVC directly. The telephone number to NVC is (603) 334-0700. Please allow 90 days before contacting the National Visa Center regarding your petition. – The NVC will contact the person for whom you are petitioning concerning further immigrant visa processing steps.

I-140 NATIONAL SOP: GLOSSARY

I-140 SOP Glossary

I-LINK

A-file	Alien registration file. The file containing all data and documentation relating to a given alien, identified by an A-number. All aliens with green cards have A-files, but nonimmigrant aliens usually do not.
AOS	Adjustment of Status
Batch	A group of files of no more than 25 that are bundled together through processing.
Beneficiary	The proposed employee on the petition.
Centralized Filing	See Sole Jurisdiction .
CFR	Code of Federal Regulations
CGFNS	Commission on Graduate of Foreign Nursing Schools
CLAIMS	Computer Linked Application Information Management System. Case processing system in which petitions/applications are data-entered, receipted, and electronically updated.
CNA	Certified Nurse's Assistant
Concurrent Filing	Other petitions or forms may accompany I-140 petitions. The acceptable forms/petitions include, but are not limited to: <ul style="list-style-type: none"> • Form I-485, Application for Adjustment of Status; • Form I-131, Application for Travel Document; • Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal; • Form I-765, Application for Employment Authorization; • Form I-824, Application for Action on an Approved Application or Petition.
Congressional Interest	A case in which a Congressional office has expressed interest in the decision. It is NOT necessary for this case to receive priority processing (see definition).
Cover letter	A letter submitted by the petitioner or representative accompanying most petitions. The cover letter may include a request to waive the fee, a request for expeditious handling, and/or other information about the case.
CSC	California Service Center
DOL	Department of Labor
Duplicate Filings	Duplicate filings refer to I-140 petitions submitted to a service center without a new fee, but with evidence that the original I-140 petition is pending at another U.S. CIS office or service center. If you encounter a filing like this, route it to U.S. CIS Review.

ECFMG	Educational Commission for Foreign Medical Graduates
Employee ID#	A two-letter, four-number identifier for a contract employee who works at one of the service centers.
ETA-750	Application for Alien Employment Certification (DOL)
Expedite	<p>Expedites can either be automatic, discretionary or Congressional.</p> <p><u>Automatic expedites</u> are cases that receive priority processing based on the visa classification or another reason, which is identified by local management.</p> <p><u>Discretionary expedites</u> are cases in which the petitioner requests expeditious handling of the case either via telephone or letter. These cases require a decision to be made by U.S. CIS staff as to whether or not the case should receive priority processing prior to the actual adjudication of the case.</p> <p><u>Congressional expedites</u> are cases for which a Congressional office has requested expeditious handling. These cases also require a decision to be made by U.S. CIS staff as to whether or not the case should receive priority processing prior to the actual adjudication of the case.</p> <p>Handle expedite cases in accordance with locally-issued policy and procedures.</p>
FCU	File Coordination Unit
Fee Waiver Request	A written request submitted by the petitioner or attorney to be exempt from paying the filing fee. A decision on the request must be made by U.S. CIS staff prior to receipting the petition.
File Maintenance	File maintenance is the process by which files from Data Entry are sorted and staged before the process of workload distribution.
FMGEMS	Foreign Medical Graduate Examination in the Medical Sciences
FMU	File Maintenance Unit
FRE	Fee Received Elsewhere
G-28	Notice of Entry of Appearance as Attorney or Representative. This form is used to provide notice that an attorney or representative is acting on behalf of the petitioner.
HHS	Health and Human Services
HQSCO	Headquarters Office of Service Center Operations

I-131	Application for Travel Document
I-140	Immigrant Petition for Alien Worker. This form is used to petition for eligibility as an immigrant, based on employment in the U.S.
I-212	Application for Permission to Reapply for Admission into the United States After Deportation or Removal
I-485	Application to Register Permanent Residence or to Adjust Status
I-765	Application for Employment Authorization
I-824	Application for Action on an Approved Application or Petition
IIRAIRA	Illegal Immigration Reform and Immigration Responsibility Act
IMMACT 90	Immigration Act of 1990
INA	Immigration and Nationality Act
ITD	Intent to Deny
ITR	Intent to Revoke
JIT	Just in Time
Jurisdiction by Geography	<p>Most employment-based petitions are subject to jurisdiction based upon geography. A petitioner is under the jurisdiction of a service center if:</p> <ul style="list-style-type: none"> • The petitioner is located in a state over which the service center has jurisdiction; or, • The petitioner meets criteria for sole jurisdiction.
Labor Certification (ETA-750)	<p>The form ETA-750 is the document used by the petitioner to demonstrate to the Department of Labor (DOL) that there are no qualified and available U.S. workers who are willing to accept the position offered to the beneficiary in the geographic location of the petitioner's business.</p>
LPN	Licensed Practical Nurse
LVN	Licensed Vocational Nurse
Manual Reject	A manual reject is a petition rejected for reasons other than incorrect fee amount, unsigned or missing remittance, or unsigned petition
NBMEE	National Board of Medical Examiners Examination
NIW	National Interest Waiver

I-LINK

NIW Physician	National Interest Waiver Physician. Physicians seeking lawful permanent residence based on medical service in an under-served area of the United States or at a Veterans Affairs facility.
NRC	National Records Center
NSC	Nebraska Service Center
NVC	National Visa Center
Petitioner	The person or company submitting the I-140 to the U.S. CIS.
Priority Processing	For the purposes of this SOP, the expeditious handling of a case, whether as a result of an automatic, discretionary or Congressional expedite.
RAFACS	Receipt and A-File Accountability and Control System. The system that reports a file's location and maintains a history of file movement.
Receipt Date	The date that the petition information is data-entered into CLAIMS (see definition). This date is NOT the filing date and is NOT used in determining the petition's processing order.
Received Date	The date the petition is physically received by the Service. For properly filed petitions, this is the date that is used to determine the processing order, processing times, etc. For all legal purposes and statistics, this is the Service's date of record. The received date may also be referred to as the filing date. *Note: This term is referred to as the receipt date in 8CFR 103.287.
RFE	Request for Evidence
ROP	Record of Proceeding. The order in which documents in a file are assembled for legal purposes.
Representative	A person authorized to appear before the Service on behalf of someone else. The Service will not recognize the person unless the person has filed a form G-28 signed by the client.
Riding Application	An application that accompanies another form.
Sole Jurisdiction	A petitioner's ability to submit all of its applications/petitions with a given service center regardless of where the beneficiary will work or where the petitioner is located. Synonymous with centralized filing.
SOP	Standard Operating Procedure

Special Handling	A case or class of cases that is/are outside of routine processing, as established by service center management. Handle special handling cases in accordance with locally-issued policy and procedures.
Staging	The process by which files are organized and prepared during workload distribution.
System Reject	A petition rejected for incorrect fee, unsigned or missing remittance, or unsigned petition. These rejections are processed in CLAIMS.
TSC	Texas Service Center
USMLE	United States Medical Licensing Examination
VA	Veterans Affairs
VSC	Vermont Service Center
VQE	Visa Qualifying Examination
Workload Distribution	Workload distribution is the process of staging, routing and distributing files.
WDU	Work Distribution Unit