

# **OVERVIEW OF PERMANENT RESIDENCE**

**Presented by Fermilab's Visa Office**

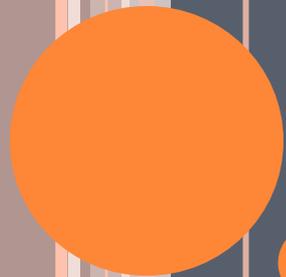
**Hosted by the Users Executive Committee**

# AGENDA

- Definitions
- Agencies
- Process
- Priority Dates and Backlogs
- The Preference Categories
- Petitions and Applications
- Caution!
- Questions?



2/15/2011



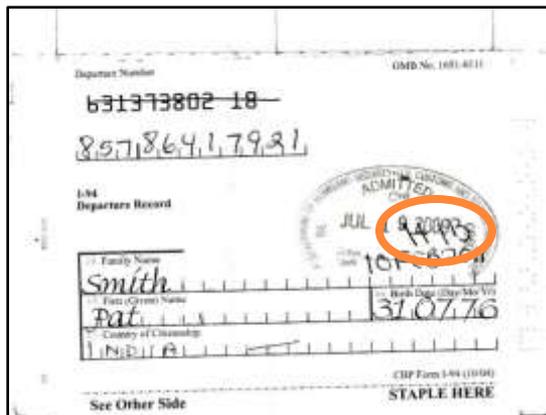
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# DEFINITIONS

# DEFINITIONS

## ○ Status

- = the rights the person has while in the U.S.
  - H-1B = right to work
  - F-1 = right to attend school
  - J-1 = right to perform research
  - Lawful Permanent Resident
- A person may have only 1 status at a time.
- Shown on the I-94 Card.



An I-94 Card (Departure Record) for a person named Smith, Pat. The card shows a date of admission of JUL 10 2010 and a date of expiration of 31 07 10. A red circle highlights the date of admission. The card also displays the Department Number 631373802-18- and the OMB No. 1681-0011. The card is labeled "I-94 Departure Record" and "CIP Form I-94 (10/06)".

## ○ Visa

- = a “ticket” into the U.S.
- Suggests the status you want once admitted to the U.S.
- There are “immigrant” visas, as well as “nonimmigrant” visas.
- Does not guarantee admission.
- A person may have more than 1 unexpired “nonimmigrant” visa at a time.



A Visa for Florence Serrano. The visa is for a nonimmigrant status (H-1B) and is valid from 21 JAN 2010 to 21 JAN 2012. The visa number is N000601236. The visa is issued by the U.S. Department of State. The visa is for a two-year period. The visa is for a research position at Fermi Research Alliance, LLC, Batavia, IL. The visa is for a two-year period. The visa is for a research position at Fermi Research Alliance, LLC, Batavia, IL. The visa is for a two-year period. The visa is for a research position at Fermi Research Alliance, LLC, Batavia, IL.

# DEFINITIONS

- Permanent Residence Process
  - The process required to change a person from nonimmigrant to immigrant status.



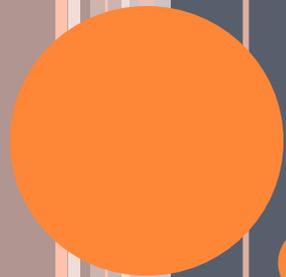
# DEFINITIONS

## ○ Immigrant Intent

- The intention to reside indefinitely (permanently) in the U.S.
- Not all nonimmigrant statuses allow you to pursue permanent residence:
  - J-1, F-1 nonimmigrants may not have “immigrant intent”.
  - Certain work toward permanent residence can be done, but visa status must be changed before “real” filing submitted to USCIS







# AGENCIES

# AGENCIES

**USCIS**

- **U.S. Citizenship and Immigration Services**
- **Decides permanent residence petitions**

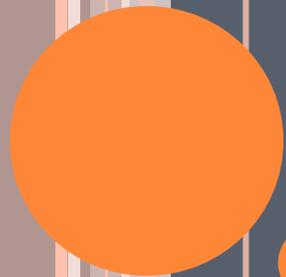
**DOL**

- **Department of Labor**
- **Decides Labor Certification applications**
- **Issues “Prevailing Wages”**

**DOS**

- **Department of State**
- **Operates Embassies and Consulates**
- **Calculates “Visa Priority Dates”**

*\*The Immigration and Naturalization Service (INS) ceased to exist in 2003; it was replaced by the DHS.*



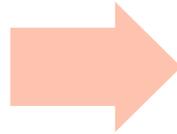
# PROCESS

# OVERVIEW OF PROCESS

1

USCIS I-140  
Petition

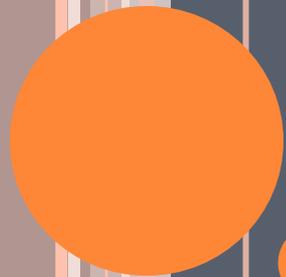
- Asks USCIS to **agree** that you qualify as a certain category of immigrant



2

USCIS I-485  
Application

- Asks the USCIS to **change** you from a nonimmigrant to an immigrant



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# PRIORITY DATES AND BACKLOGS



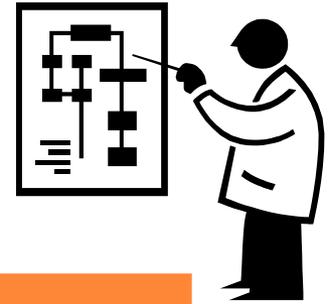
# PREFERENCE CATEGORIES



2/15/2011

- Worldwide immigration to the U.S. is limited based on “Preference Categories.”
- Preference Categories organize how much or how little the US “prefers” a certain type of immigrant, according to:
  1. **Basis** for permanent residence,
    - Employment (skills) versus Family  
*and*
  2. **Sub-groups** of more or less desirable immigrants
    - In “**E**mployment-**B**ased” situations, the USA “prefers” immigrants with *more* skills over immigrants with *fewer* skills.
    - In “**F**amily-**B**ased” situations, the USA “prefers” immigrants with closer family ties over immigrants with fewer ties.
- US law describes 5 “EB” categories of workers who may immigrate to the U.S. on the basis of their professional skills or employment.
  - Abbreviated as EB-1, EB-2, EB-3, etc.

# PREFERENCE CATEGORIES

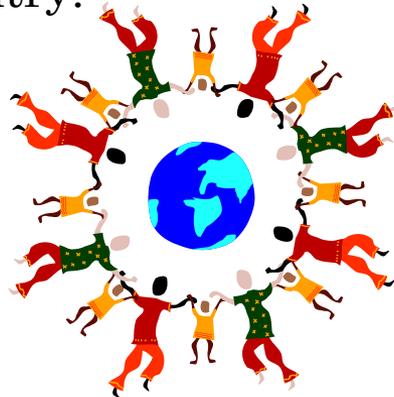


2/15/2011

| Preference Category         | Type of Fermilab Worker   |
|-----------------------------|---|
| EB-1<br>(First Preference)  | <ul style="list-style-type: none"><li>• Individual with extraordinary ability in the sciences</li><li>• Outstanding Researcher</li></ul>  |
| EB-2<br>(Second Preference) | <ul style="list-style-type: none"><li>• Advanced Degreed Professional</li><li>• Individual with Exceptional Ability in the sciences</li><br/><li>• “Schedule A Group II” Exceptional Ability”</li></ul> |
| EB-3<br>(Third Preference)  | Individual with a Bachelor’s Degree related to the job  |

# WORLDWIDE IMMIGRATION

- The USA ***also*** limits immigration by restricting the total number of immigrants that enter the U.S. from each country.
  - Based on **country of birth**.
    - Current citizenship is irrelevant.
    - An immigrant can “claim” the spouse’s country of birth.
    - This is called your “**country of chargeability**”.
    - No more than 7% of total immigration each fiscal year can be from a given country.



# COUNTING IMMIGRANTS



- The Department of State (DOS) is responsible for monitoring yearly immigration.
- Follows the government fiscal year (October 1 to September 30)
  - Each October 1, there is a new “release” of immigrant visas for the year.
  - DOS must
    - Balance new availability against “backlogged” immigrants who filed before the current fiscal year but still await greencards.
    - Anticipate new filings that will be made through the fiscal year by individuals of different skill levels and birth countries.

# COUNTING IMMIGRANTS

- DOS publishes a “Visa Bulletin”.

[http://travel.state.gov/visa/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/bulletin/bulletin_1360.html)

- Lists the availability of immigrant visas based on
  - The different immigrant bases (Employment or Family)
  - Different preference categories (EB-1, EB-2, EB-3, etc.), and
  - Different countries of chargeability.
- Issued in the middle of each month.
- Forecasts what will be available the next month.



# VISA BULLETIN

- The current bulletin is listed here.

## Visa Bulletin

The Visa Bulletin offers valuable information about immigration\*. Click on the appropriate link below to find the desired bulletin.

Upcoming month's visa bulletin: [March 2011 \(Coming Soon\)](#)

This month's visa bulletin: [February 2011](#)

Archived visa bulletins: [January 2011 and before](#)

### Comprehensive Lists of Cut-Off Dates:

#### Family Preference:

- [Worldwide \(non-oversubscribed countries only\) Family Preference Cut-Off Dates from FY1992-2010](#)
- [China \(mainland-born only\) Family Preference Cut-Off Dates from FY1992-2010](#)
- [India Family Preference Cut-Off Dates from FY1992-2010](#)
- [Mexico Family Preference Cut-Off Dates from FY1992-2010](#)
- [Philippines Family Preference Cut-Off Dates from FY1992-2010](#)

#### Employment Preference:

- [Worldwide \(non-oversubscribed countries only\) Employment Preference Cut-Off Dates from FY1992-2010](#)
- [China \(mainland-born only\) Employment Preference Cut-Off Dates from FY1992-2010](#)
- [India Employment Preference Cut-Off Dates from FY1992-2010](#)
- [Mexico Employment Preference Cut-Off Dates from FY1992-2010](#)
- [Philippines Employment Preference Cut-Off Dates from FY1992-2010](#)

\* [Operation of the Numerical Control Process \(NCP\)](#) Explains how immigrant visas subject to numerical limitations are allotted and the determination of cut-off dates for the Visa Bulletin.

- Charts showing “cut-off Dates” for countries with backlogs are shown here.

# VISA BULLETIN

- This section describes what kind of immigrant is included in the Preference Category.

## Visa Bulletin For February 2011

**Third:** Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth:** Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

### EMPLOYMENT-BASED PREFERENCES

**First:** Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

**Second:** Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

**Third:** Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

# VISA BULLETIN

- The online chart shows the availability or “Cut-off Dates” of immigrant visas.
  - 2A = Advanced Degreed
  - 2B = Exceptional Ability
  - “Other Workers” are unskilled laborers.

| <b>Employment-Based</b>                        | <b>All Chargeability Areas Except Those Listed</b> | <b>CHINA-mainland born</b> | <b>DOMINICAN REPUBLIC</b> | <b>INDIA</b> | <b>MEXICO</b> | <b>PHILIPPINES</b> |
|--|--|----------------------------|---------------------------|--------------|---------------|--------------------|
| 1st  | C  | C                          | C                         | C            | C             | C                  |
| 2nd  | C  | 01JUL06                    | C                         | 08MAY06      | C             | C                  |
| 3rd  | 01APR05  | 01JAN04                    | 01APR05                   | 22FEB02      | 08JUL03       | 01APR05            |
| Other Workers                                  | 01MAY03  | 22APR03                    | 01MAY03                   | 22FEB02      | 01MAY03       | 01MAY03            |
| 4th  | C  | C                          | C                         | C            | C             | C                  |
| Certain Religious Workers                      | C  | C                          | C                         | C            | C             | C                  |
| 5th  | C  | C                          | C                         | C            | C             | C                  |
| Targeted Employment Areas/<br>Regional Centers | C  | C                          | C                         | C            | C             | C                  |
| 5th Pilot Programs                             | C  | C                          | C                         | C            | C             | C                  |

# VISA BULLETIN

| Employment-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | DOMINICAN REPUBLIC | INDIA   | MEXICO  | PHILIPPINES |
|------------------|---|---------------------|--------------------|---------|---------|-------------|
| 1st              | C   | C                   | C                  | C       | C       | C           |
| 2nd              | C   | 01JUL06             | C                  | 08MAY06 | C       | C           |
| 3rd              | 01APR05                                     | 01JAN04             | 01APR05            | 22FEB02 | 08JUL03 | 01APR05     |

2/13/2011

- “C” = “Current”
  - There is no backlog.
    - There will be no additional no delay in processing your case for immigration, beyond the “normal processing time” for the USCIS.

# VISA BULLETIN

| Employment-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | DOMINICAN REPUBLIC | INDIA   | MEXICO  | PHILIPPINES |
|------------------|---|---------------------|--------------------|---------|---------|-------------|
| 1st              | C   | C                   | C                  | C       | C       | C           |
| 2nd              | C   | 01JUL06             | C                  | 08MAY06 | C       | C           |
| 3rd              | 01APR05                                     | 01JAN04             | 01APR05            | 22FEB02 | 08JUL03 | 01APR05     |

2/13/2011

- A *Date* means there is a **backlog**.
  - The date = the “Cut-Off Date” for that Preference Category.
    - More people from country have applied to immigrate than is permitted within a given fiscal year.
    - Permanent Resident cases with Priority Dates that are the same or earlier than the listed “Cut-Off Date” may be processed for immigration.
    - Cases with Priority Dates after the listed Cut-Off Date cannot be processed.
      - They must **wait** until their Priority Date “becomes current” (becomes the same or earlier than the Cut-Off Date).

$$\text{Priority Date} \leq \text{Cut-Off Date}$$

## EXAMPLE #1

| Employment-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | DOMINICAN REPUBLIC | INDIA   | MEXICO  | PHILIPPINES |
|------------------|---|---------------------|--------------------|---------|---------|-------------|
| 1st              | C   | C                   | C                  | C       | C       | C           |
| 2nd              | C   | 01JUL06             | C                  | 08MAY06 | C       | C           |
| 3rd              | 01APR05                                     | 01JAN04             | 01APR05            | 22FEB02 | 08JUL03 | 01APR05     |

2/15/2011

- Daisy has a permanent residence case with a Priority Date of December 1, 2006.
- Her permanent residence case is in the “Second” category for employment-based permanent residence. (EB-2)
- She was born in India. She has just married a Canadian citizen (“All Other”).
  - EB-2 India has a “cut-off date” of May 8, 2006.
  - EB-2 “All Other” is “current”.
  - The best “country of chargeability” = Canada.
- There is no backlog in her situation.
- This means that the USCIS will process her petition and application within their *normal processing times*.

## EXAMPLE #2

| Employment-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | DOMINICAN REPUBLIC | INDIA   | MEXICO  | PHILIPPINES |
|------------------|---|---------------------|--------------------|---------|---------|-------------|
| 1st              | C   | C                   | C                  | C       | C       | C           |
| 2nd              | C   | 01JUL06             | C                  | 08MAY06 | C       | C           |
| 3rd              | 01APR05                                     | 01JAN04             | 01APR05            | 22FEB02 | 08JUL03 | 01APR05     |

2/15/2011

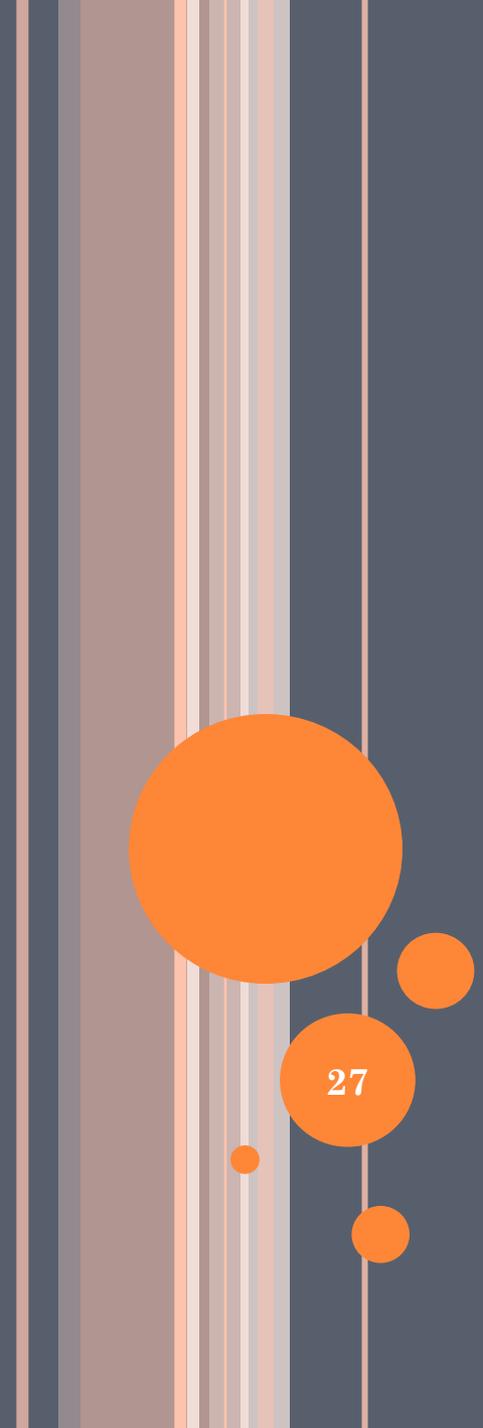
- Donald has a permanent residence case with a Priority Date of December 1, 2003.
- He was born in Mexico. He is married to an Indian citizen.
- His permanent residence case is in the “Third” category for employment-based permanent residence. (EB-3)
  - EB-3 Mexico has a “cut-off date” of July 8, 2003.
  - EB-3 India has a “cut-off date” of February 22, 2002.
  - The best “country of chargeability” = Mexico.
- Donald must wait before he can file his I-485 Application:
  - Donald cannot file his Form I-485 application until the EB-3 Category has a Cut-Off Date of 01-Dec-2003 or later.
- USCIS will not issue the greencard unless the EB-3 Category has a Cut-Off Date of 01-Dec-2003 or later.

## EXAMPLE #2 CONTINUED

| Employment-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | DOMINICAN REPUBLIC | INDIA   | MEXICO  | PHILIPPINES |
|------------------|---|---------------------|--------------------|---------|---------|-------------|
| 1st              | C   | C                   | C                  | C       | C       | C           |
| 2nd              | C   | 01JUL06             | C                  | 08MAY06 | C       | C           |
| 3rd              | 01APR05                                     | 01JAN04             | 01APR05            | 22FEB02 | 08JUL03 | 01APR05     |

2/15/2011

- Donald has a permanent residence case with a Priority Date of December 1, 2003.
- His “country of chargeability” = Mexico. EB-3 Mexico has a “cut-off date” of July 8, 2003.
- From July 8, 2003 to Dec. 1, 2003 = ~5 months.
  - This does NOT mean that Donald has only 5 months to wait!
  - Visa availability might advance or “retrogress” based on:
    - Overall current usage (the number of filings that are occurring right now in each Category)
    - Past usage, and
    - Anticipated usage (are there global events that might result in higher-than-normal filings)



# MONITORING THE STATUS OF YOUR PAPERWORK

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# MONITORING THE STATUS OF YOUR FILING

- When you file anything with the USCIS, you get a receipt:

- Indicates the Form for which this receipt is being issued.
- Lists the “Receipt Number”
- Confirms the Priority Date
- Confirms the general Preference Category
  - EB-1, EB-2 or EB-3, etc.
- The Service Center that is processing the case.

2/15/2011

Department of Homeland Security  
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

**THE UNITED STATES OF AMERICA**

|   |                                  |
|---|----------------------------------|
| Receipt Type<br>Receipt                 | Receipt Date<br>January 25, 2011 |
| Form Number<br>I-797C, Notice of Action | Form<br>1 of 1                   |
| Priority Date<br>August 29, 2001        | Date of Birth<br>June 01, 1971   |
| Form Number<br>I-797C, Notice of Action | Date of Birth<br>June 01, 1971   |

APPLICANT INFORMATION

APPLICANT NAME AND MAILING ADDRESS  
PERM RESEARCH ALLIANCE LLC  
PO BOX 500  
BATON Rouge, LA 70801

PAYMENT INFORMATION

|                          |          |
|--------------------------|----------|
| Application/Petition Fee | \$580.00 |
| Biometrics Fee           | \$0.00   |
| Total Amount Received    | \$580.00 |
| Total Balance Due        | \$0.00   |

The I-797 has been received by our office for the following information and it is printed:

Name: [REDACTED] Date of Birth: [REDACTED] Place of Birth: [REDACTED] Class of Admission: [REDACTED]

Please verify your personal information listed above and immediately notify the USCIS National Customer Service Center at the phone number listed below if there are any changes.

Please note that if a priority date is printed on this notice, the priority date will reflect earlier retained priority dates.

If you have questions about possible immigration benefits and services, filing information, or USCIS fees, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833. Please also refer to the USCIS website: [www.uscis.gov](http://www.uscis.gov).

If you have any questions or comments regarding this notice or the status of your case, please contact our customer service number.

You will be notified separately about any other cases you may have filed.

USCIS Office Address:  
USCIS  
Adelphi Service Center  
10000 Adelphi Road  
Adelphi, VA 22021

USCIS Customer Service Number:  
(800)375-5283  
APPLICANT COPY

Form I-797C (Rev. 12/2008) Y

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# MONITORING THE STATUS OF YOUR FILING

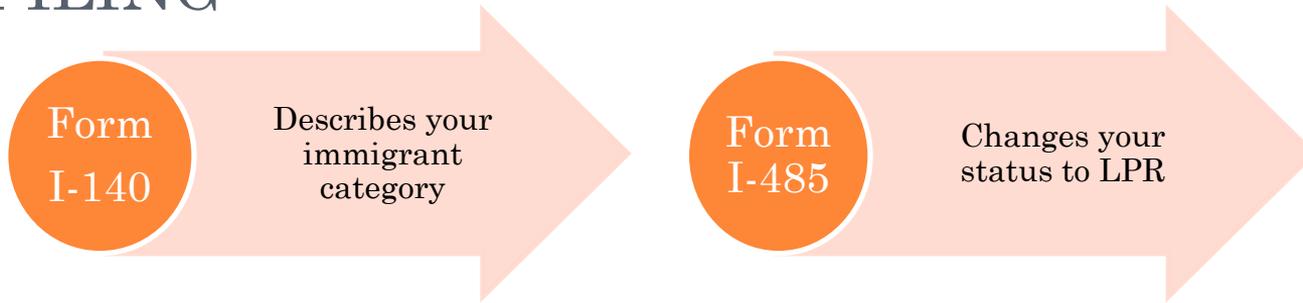
- You can monitor the status of the petition or application online.
  - Go to [www.uscis.gov](http://www.uscis.gov).
  - Enter the “Receipt Number” without spaces under “Case Status”
    - *E.g.* LIN1100012345
  - Click on “Check Status”

The screenshot shows the USCIS Home Page. At the top, there is a navigation bar with links for Home, Español, Blog, and Index. Below this is a search bar with a 'Search' button. The main content area features a navigation menu with categories: FORMS, NEWS, RESOURCES, LAWS, OUTREACH, and ABOUT US. A 'HEADLINES' section contains a news item about USCIS moving to an electronic environment. On the left, there is a 'WHERE TO START' section with dropdown menus for 'I Am...' and 'I Want To...', and a 'Get Results' button. The 'CASE STATUS' section is highlighted with an orange circle and contains a text input field for 'Enter your receipt number' and a 'Check Status' button. An orange arrow points from the text in the list above to this 'Check Status' button. Other sections include 'Watch USCIS on... YouTube' with a video player, 'Green Card (Permanent Residence)', 'Citizenship', 'ALERTS', 'E-VERIFY®', and 'MOST SEARCHED'.

# MONITORING THE STATUS OF YOUR FILING



2/15/2011

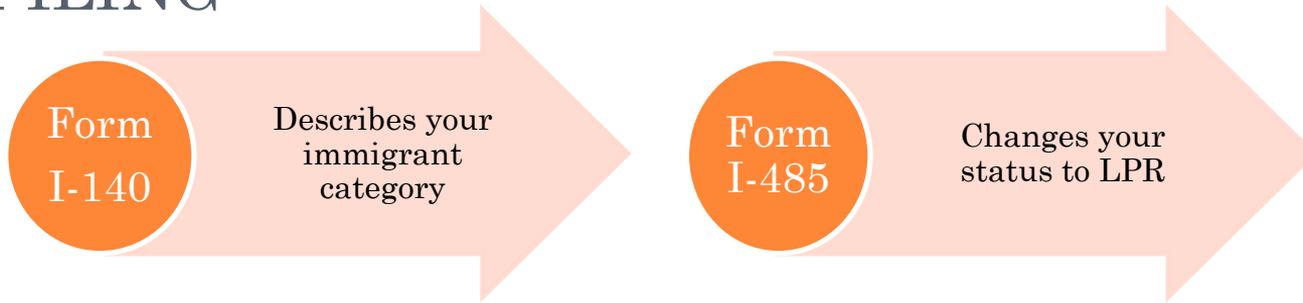


- The I-140 petition is “descriptive”.
  - It does not give you a specific right or benefit.
  - It confirms that you are (or are not) a specific category of immigrant.
- The I-485 Application gives you a real benefit.
  - It changes your immigration status to Lawful Permanent Resident.
- I-140 petitions can be filed at any time.
- I-485 applications can be filed only if an “immigrant visa” is available.
  - Your Category either must be “current,” or the “Cut-Off Date” must be the same or later than your Priority Date.

# MONITORING THE STATUS OF YOUR FILING



2/15/2011



- It is possible to file both the I-140 petition and the I-485 Application at the same time.
  - Called “concurrent” filing.
- This happens only if there is an immigrant visa immediately available at the time of filing.
- Can sometimes slightly speed overall processing of the paperwork.
- Even if the I-485 is filed, it will not be approved unless there is, at the time the file is ready for approval, an immigrant visa still available for the Category.

# PROCESSING TIMES

- The USCIS posts “processing times” online at [www.uscis.gov](http://www.uscis.gov).

2/15/2011

The screenshot shows the USCIS website homepage. At the top left is the USCIS logo and the text "U.S. Citizenship and Immigration Services". To the right are navigation links for "Home | Español | Blog | Index" and a search box. Below the header is a navigation menu with categories: FORMS, NEWS, RESOURCES, LAWS, OUTREACH, and ABOUT US. A "HEADLINES" banner reads "USCIS moving from a paper-based model to an electronic environment".

The main content area is divided into several sections:

- WHERE TO START:** Includes dropdown menus for "I Am..." and "I Want To...", a "Got Results" button, and a "CASE STATUS" section with a "Check Status" button.
- RESIDENT:** A section for "Green Card (Permanent Residence)" with links for "Renew or Replace My Green Card", "Remove Conditions on My Green Card", "Green Card Through Family", "Green Card Through a Job", and "Help HAITI Act of 2010".
- CITIZENSHIP:** A section for "Citizenship" with links for "Citizenship Through Naturalization", "Citizenship Through Parents", "The Naturalization Test", and "Citizenship Resource Center".
- WORKING IN THE US:** A section for "Working in the US" with links for "Information for Employers and Employees", "Permanent Workers", "Temporary (Nonimmigrant) Workers", and "Temporary Visitors for Business, Student and Exchange Visitors".
- FAMILY:** A section for "Family" with links for "Family of U.S. Citizens", "Family of Green Card Holders", and "Family of Refugees & Asylees Fiancé(e) Visas".
- ALERTS:** A section for "ALERTS" with links for "Delayed Immediate Relative Petitions, (Form I-130) at Texas Service Center", "Public Comment Period for Professional Conduct Rule Reopened and Extended", and "Message From Director Mayorkas Regarding Publication of Revised Handbook for Employers".
- E-VERIFY:** A section for "E-VERIFY" with links for "E-Verify Homepage" and "E-Verify Login".
- MOST SEARCHED FORMS:** A section for "MOST SEARCHED FORMS" with links for "Apply for Citizenship (Form N-400)", "Apply for a Green Card (Form I-485)", "Help My Relative Immigrate (Form I-130)", "Renew or Replace My Green Card (Form I-90)", "Employment Verification (Form I-9)", "Apply for Employment Authorization (Form I-765)", and "Affidavit of Support (Form I-864)".
- CUSTOMER TOOLS:** A section for "CUSTOMER TOOLS" with a sub-section "Before I File" containing links for "Check Filing Fees", "File My Application Online (E-Verify)", "Check Processing Times" (circled in red with an arrow pointing to it), "Check National Processing Volumes and Trends", and "Find a Medical Doctor (Civil Surgeon)".

# PROCESSING TIMES

- Go to “Service Center” and select the Service Center where your case is being processed.

## USCIS Processing Time Information

U.S. Citizenship and Immigration Services (USCIS) is committed to offering the best possible service to you, our customer. With our focus on customer service, we offer you a variety of services both before and after you file your case. For example, you can:

- Determine how long we take to process a particular type of case;
- Easily check the status of your case by clicking on our USCIS Web site; or
- Check our [customer guide](#) which explains how to contact us. The guide will also help you determine if your case is outside of the targeted processing time.

### Background on Case Processing

USCIS usually processes cases in the order they are received. For each type of application or petition we have specific workload processing goals. For example, we try to process naturalization cases within 5 months of the date we receive them and immediate relative petitions (for the spouse, parent or minor child of a U.S. citizen) within 6 months of the receipt date. Sometimes the volume of cases we receive is so large that it prevents us from achieving our goals, but we never stop trying.

### Case Processing Table

We have created a table you can use to determine how long we are taking to process an application or petition at a particular office. If you have already filed an application or petition, you can get an idea of how much longer it will take to process your case. To do so, you will need:

- The office where it has been or will be filed (or to which it has been transferred);
- The type of application or petition; and
- The date on which it was filed, if it has already been submitted.

If you do not know this information about a case you have filed, you can find it on the Notice of Receipt that we mailed to you when you filed your application or petition.

### Instructions on Using the Table

First, using the drop down menus below, find the local office or service center handling the case that interests you. Then click on the relating "Processing Dates" button. This will bring up a chart that shows the Form Number, Form Name and Processing Times for all of the forms that are processed at that office. (Note that not all offices process all types of applications and petitions.)

|  |                                 |                                 |
|--|---------------------------------|---------------------------------|
| Field Office                                 | Agana GU                        | Field Office Processing Dates   |
| Service Center                               | CSC - California Service Center | Service Center Processing Dates |
| National Benefits Center (also known as MSC) |                                 | NBC Processing Dates            |

# PROCESSING TIMES



U.S. Citizenship  
and Immigration  
Services

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## USCIS Processing Time Information

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### USCIS Processing Time Information for our Nebraska Service Center

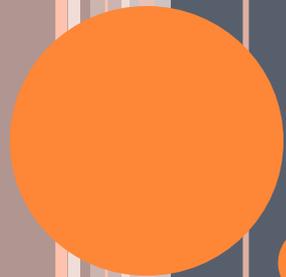
Posted: January 14, 2011

Field Office Processing Dates for Nebraska Service Center as of: November 30, 2010

| Form  | Title                               | Classification or Basis for Filing:  | Processing Timeframe: |
|-------|-------------------------------------|--|-----------------------|
| I-140 | Immigrant Petition for Alien Worker | Extraordinary ability  | 4 Months              |
| I-140 | Immigrant Petition for Alien Worker | Outstanding professor or researcher  | 4 Months              |
| I-140 | Immigrant Petition for Alien Worker | Multinational executive or manager   | 4 Months              |
| I-140 | Immigrant Petition for Alien Worker | Advanced degree or exceptional ability                                       | 4 Months              |
| I-140 | Immigrant Petition for Alien Worker | Skilled worker or professional   | 4 Months              |
| I-140 | Immigrant Petition for Alien Worker | Unskilled worker   | 4 Months              |
| I-140 | Immigrant Petition for Alien Worker | Advanced degree or exceptional ability requesting a National Interest Waiver | 4 Months              |

- Lists the average timeframe for cases within each Category.
- Based on past processing – does not accommodate changes in staffing or other events that might affect current processing.
- Your case might be faster or slower than average.

*Add the time listed (4 months) to the “date received” for your case, as indicated on your Receipt, to see if your case is taking longer than the average processing time.*

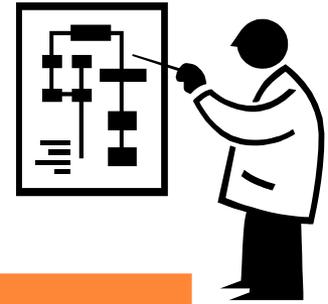


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# THE PREFERENCE CATEGORIES

# PREFERENCE CATEGORIES



2/15/2011

| Preference Category         | Type of Fermilab Worker   |
|-----------------------------|---|
| EB-1<br>(First Preference)  | <ul style="list-style-type: none"><li>• Individual with extraordinary ability in the sciences</li><li>• Outstanding Researcher</li></ul>  |
| EB-2<br>(Second Preference) | <ul style="list-style-type: none"><li>• Advanced Degreed Professional</li><li>• Individual with Exceptional Ability in the sciences</li><br/><li>• “Schedule A Group II” Exceptional Ability”</li></ul> |
| EB-3<br>(Third Preference)  | Individual with a Bachelor’s Degree related to the job  |

# FIRST PREFERENCE CATEGORY

# EB-1

# EXTRAORDINARY ABILITY



# EXTRAORDINARY ABILITY

- For individuals with “Extraordinary ability” in the sciences.
- Must show that:
  - You are “...one of that small percentage who have risen to the very top of the field of endeavor...”
  - You have “*sustained*” national or international acclaim
    - National or international acclaim on more than one occasion
    - Acclaim existed in the past and continues to exist at the time of filing.
  - Your achievements have been *recognized* in the field of expertise.
- The law sets out 9 ways to show “Extraordinary Ability.”
  - You must show you satisfy at least 3 of these in your petition.
  - More is better!
- The Fermilab internal process of preparing an Extraordinary Ability petition is at [http://wdrs.fnal.gov/visas/first\\_pref.html](http://wdrs.fnal.gov/visas/first_pref.html).

*More detailed information about this type of petition will be provided in March UEC Immigration Presentation.*

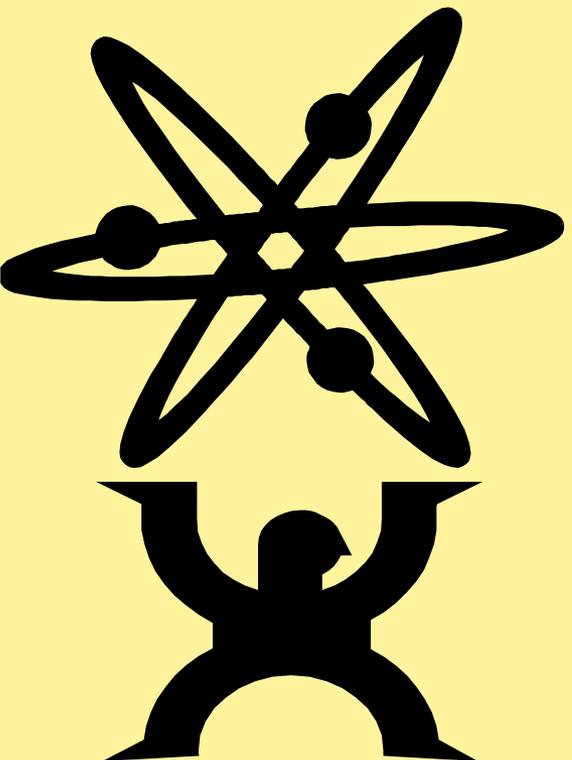


# EXTRAORDINARY ABILITY

- You may “self-file” an Extraordinary Ability I-140 petition.
- Does not require that you have an offer for “permanent employment” in the United States.
  - But you must show that you will “continue work in the area of expertise.”



# OUTSTANDING RESEARCHER



# OUTSTANDING RESEARCHERS



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- For individuals who are “outstanding researchers”.
- Must show that:
  - You are “...recognized internationally as outstanding...”
  - You have at least 3 years of experience in teaching and/or research, and
  - You have an offer of “permanent” employment in the U.S. doing research in your field.
- The law sets out 6 ways to show you are an Outstanding Researcher.
  - You must show you satisfy at least 2 of these in your petition.
  - More is better!
  - See <http://wdrs.fnal.gov/visas/outstanding.html> for more information.
- The Fermilab internal process of preparing an Outstanding Researcher petition is at [http://wdrs.fnal.gov/visas/first\\_pref.html](http://wdrs.fnal.gov/visas/first_pref.html).

# FILING YOUR EB-1 PETITION



2/15/2011

- All “EB-1” categories are “current.”
- The Form I-140 petition may be filed concurrently with the Form I-485 Application.
- Your priority date is the date on which your Form I-140 petition is filed with the USCIS.

| Employment-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | DOMINICAN REPUBLIC | INDIA   | MEXICO  | PHILIPPINES |
|------------------|---|---------------------|--------------------|---------|---------|-------------|
| 1st              | C   | C                   | C                  | C       | C       | C           |
| 2nd              | C   | 01JUL06             | C                  | 08MAY06 | C       | C           |
| 3rd              | 01APR05                                     | 01JAN04             | 01APR05            | 22FEB02 | 08JUL03 | 01APR05     |

# SECOND PREFERENCE CATEGORY

# EB-2

# ADVANCED DEGREEED PROFESSIONALS

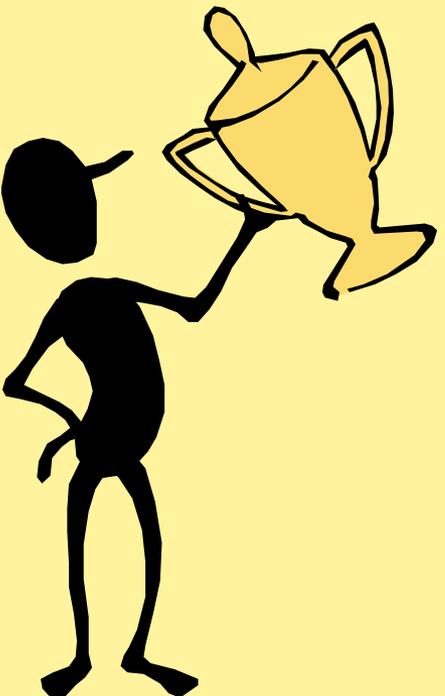


# ADVANCED DEGREED PROFESSIONAL



- For situations where:
  - You are a member of the “Professions”.
    - Engineer, scientist, doctor, lawyer, etc.
  - You have an offer for a “permanent” job,
  - That job requires an education above that of a bachelor’s degree (i.e. Master’s or PhD), and
  - You have the required higher level degree.
  
- This is useful for individuals who cannot document that they are “extraordinary” or “outstanding”.

# EXCEPTIONAL ABILITY





2/15/2011

# EXCEPTIONAL ABILITY

- There are TWO types of immigration filings for people with “Exceptional Ability:”
  - “USCIS” Exceptional Ability
    - Defined by the “Immigration” Code of Regulations (8. C.F.R. Section 204.5)
  - “Schedule A, Group II” Exceptional Ability
    - Defined by the Department of Labor’s Code of Regulations (20 C.F.R. Section 656.15(b)).
  - These are different in terms of requirements, substance and procedure!



# “USCIS” EXCEPTIONAL ABILITY

- Individuals must show:
  - ... “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business,” and
  - An offer of “permanent” employment in the U.S. to work in the field of your exceptional ability.
- Immigration law sets out 6 ways to show you are “exceptional.”
  - You must include 3 of these in your petition.
  - More is better!
- If you have an advanced degree, qualifying as an “advanced degreed professional” is *much* easier than qualifying as a person with “USCIS” exceptional ability.



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# “DOL” EXCEPTIONAL ABILITY

- Individuals must show that:
  - They have “...current widespread acclaim and international recognition ...” and have received “internationally recognized prizes or awards for excellence;” and
  - Their work during the past twelve months required, and the intended work in the USA will require, exceptional ability.
- Department of Labor’s law sets out 7 ways to show you are “exceptional.”
  - You must include 2 of these in your petition.
  - More is better!
- The “Schedule A, Group II” Exceptional Ability is “on par with” the EB-1 Extraordinary Ability category.
  - It is *equally* difficult to demonstrate “DOL” exceptional ability than it is to demonstrate “extraordinary ability” for the EB-1 category.
  - It is *more* difficult to demonstrate “DOL” exceptional ability than to demonstrate “USCIS” exceptional ability.

# LABOR CERTIFICATION





2/15/2011

# LABOR CERTIFICATION

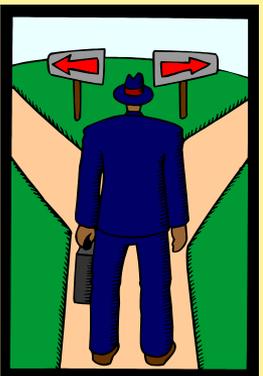
- EB-2 petitions *usually* must be accompanied by “Labor Certification”.
- Applications for Labor Certification are decided by the Department of Labor (DOL).
- Labor Certification must be completed **FIRST**, before the Form I-140 petition is prepared.
  - The Labor Certification Application must *prove* to the DOL that “there are no minimally-qualified American workers available, willing and able to work in “the job” in the geographic location listed” or the DOL will deny the application.
- See [http://wdrs.fnal.gov/visas/labor\\_certification.html](http://wdrs.fnal.gov/visas/labor_certification.html) for more information.

# LABOR CERTIFICATION

- The employer must advertise “the job” according to strict DOL regulations.
  - All aspects of the job must be “quantified” and “measurable”.
- This also is called a “Labor Market Test”.
- If the recruitment does *not* find a “minimally-qualified American worker who is willing, able and available to perform the job,” then Fermilab may file Labor Certification application with the DOL.
- If the application is certified (approved), the I-140 petition must be filed with the USCIS within 180 days.



## EXCEPTIONS TO LABOR CERTIFICATION



# EXCEPTIONS TO LABOR CERTIFICATION



2/15/2011

- EB-2 petitions *usually* must be accompanied by “Labor Certification”.
- There are two exceptions to this:
  1. **Blanket Determination**
  2. **National Interest Waivers (NIW)**
- These two situations are the only EB-2 cases where Labor Certification is not required.

# EXCEPTIONS TO LABOR CERTIFICATION

## 1. Blanket Determination

- Available only to “Schedule A, Group II” Exceptional Ability.
- Labor Certification *is not required*.
  - The DOL has “pre-certified” that there are insufficient American workers available.
- The EB-2 petition must demonstrate that you meet the requirements for “DOL” Exceptional Ability.
  - See Slide #50.





# EXCEPTIONS TO LABOR CERTIFICATION

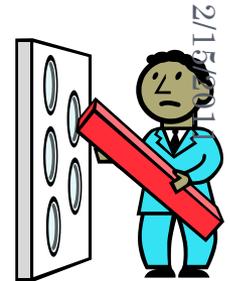
## 2. National Interest Waivers (NIW)

- Available for any EB-2 petition.
- Asks for the requirement for a permanent job offer be waived because of the circumstances of the particular individual.
  - When the requirement for a permanent job offer is waived, Labor Certification no longer is required.
- NIW Petitions must show:
  - a) **How you qualify as an EB-2 immigrant:**
    - Advanced degree, or “USCIS” Exceptional Ability?
  - b) **How you qualify for the waiver** by including details about:
    - The nature of your work,
    - How your work relates to US “National Interests” (domestic and/or international goals and priorities), and
    - How your abilities are special:
      - Explanation of what you do; examples of your achievements; and proof of national and international recognition of your abilities and achievements
- Why Labor Certification would not result in finding an individual with comparable abilities.



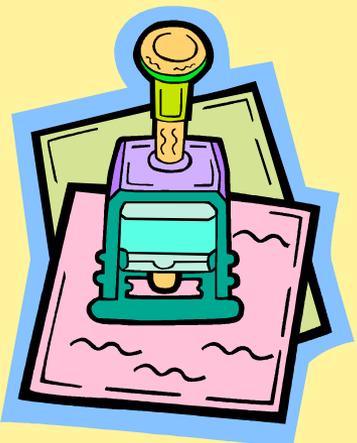
# NATIONAL INTEREST WAIVERS

- By law, EB-1 and EB-2 petitions have pre-set, inflexible ways to show that you are “extraordinary,” “outstanding,” or “exceptional”.
  - Extraordinary = 3 out of 9 elements.
  - Outstanding = 2 out of 6 elements.
  - “USCIS” Exceptional = 3 out of 6 elements
  - “DOL” Exceptional = 2 out of 7 elements.
- NIW petitions are more flexible because they do not pre-define the way you provide your information.



*More detailed information about this type of petition will be provided in March UEC Immigration Presentation.*

## FILING YOUR EB-2 PETITION





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# FILING YOUR EB-2 PETITION

- *Most* “EB-2” categories are “current”.
  - Only India and China are backlogged.
- If your category is current, you may “concurrently” file your I-485 application.
- The I-485 will not be approved until the I-140 is approved, but overall this speeds up the issuance of the greencard.
- Your priority date is either :
  - The date on which you filed a Labor Certification Application with the DOL, or
  - The date on which your filed your Petition with the USCIS, if Labor Certification is not required.

| Employment-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | DOMINICAN REPUBLIC | INDIA   | MEXICO  | PHILIPPINES |
|------------------|---|---------------------|--------------------|---------|---------|-------------|
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| 2nd              | C   | 01JUL06             | C                  | 08MAY06 | C       | C           |
| 3rd              | 01APR05                                     | 01JAN04             | 01APR05            | 22FEB02 | 08JUL03 | 01APR05     |

# SUMMARY OF EB-2 “NORMAL” PROCESS

Engage in Labor Market Test



File Labor Certification  
Application with DOL



DOL certifies “Labor Cert”



File I-140 Petition with USCIS



If Priority Date is Current, also  
file I-485 with USCIS

# SUMMARY OF NIW AND “SCHEDULE A, GROUP II” PROCESS

## File I-140 Petition with USCIS

- Must include completed Labor Certification Application

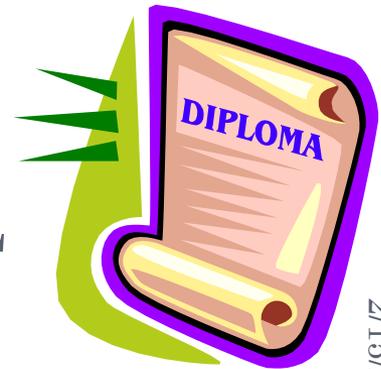


If Priority Date is Current, also file I-485 with USCIS

# THIRD PREFERENCE CATEGORY

# EB-3

# BACHELOR DEGREED PROFESSIONAL



2/15/2011

- For situations where:
  - You are a member of the “Professions”.
    - Engineer, scientist, doctor, lawyer, etc.
  - You have an offer for a “permanent” job.
  - That job requires a Bachelor’s Degree in a specific field or fields, and
  - You have the required degree.
  
- This is useful for individuals who
  - Cannot *document* that they are “extraordinary” or “outstanding” and/or
  - Have non-traditional educations, and/or
  - Have foreign education that does not cleanly cross over to the U.S. education structure.

# EB-3 PROCESS

Engage in Labor Market Test

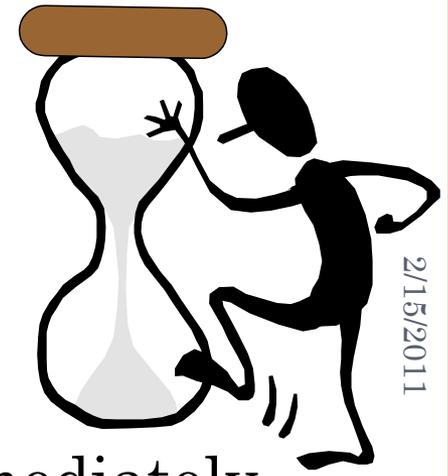
File Labor Certification  
Application with DOL

DOL certifies “Labor Cert”

File I-140 Petition with USCIS

If Priority Date is Current, also  
file I-485 with USCIS

# FILING YOUR EB-3 PETITION

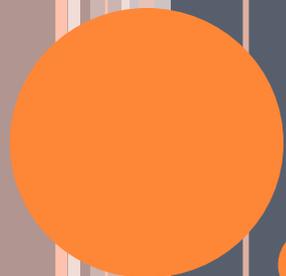


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- All “EB-3” categories are “backlogged”.
- The Form I-140 petition may be filed immediately.
- The Form I-485 Application may not be filed until your priority date is current.
- Your priority date is the date on which your Labor Certification Application was filed with the DOL.



| Employment-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | DOMINICAN REPUBLIC | INDIA   | MEXICO  | PHILIPPINES |
|------------------|---|---------------------|--------------------|---------|---------|-------------|
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# PETITIONS AND APPLICATIONS

# PETITIONS AND APPLICATIONS

## Form I-140 Petition

- Filed by employer usually.
  - You may file NIW petitions and Extraordinary Ability petitions yourself
    - = “self-sponsoring”.
- Includes information relating to employment, your employer, your credentials, etc.

## Form I-485 Application

- Also called “Adjustment”.
- Filed by you.
- Includes personal information about you
  - Immigration history
  - Medical history
  - Travel history
  - Residences
  - Family

# ADJUSTMENT APPLICATIONS (FORM I-485)

- Adjustment applicants must undergo a medical examination by a doctor certified to do these by the USCIS.
- Adjustment applicants simultaneously file applications for:
  - Employment Authorization Document (EAD)
  - Advance Parole (travel) Documents.
- These filings are included in the Adjustment fee charged by the USCIS.
- They are good backups to your nonimmigrant visa (H-1B, O-1, ...) anyway.
- See [http://wdrs.fnal.gov/visas/adjustment\\_status.html](http://wdrs.fnal.gov/visas/adjustment_status.html) for more information.





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## WHO DOES WHAT?

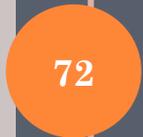
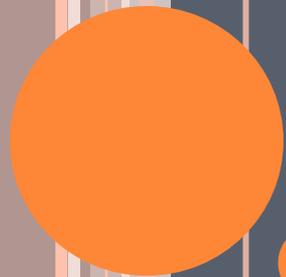
- Permanent residence petitions for Fermilab employees that are based on “permanent” job offers are done *solely* by Fermilab’s Visa Office.
  - Labor Certification Applications,
  - EB-3 Petitions,
  - EB-2 Petitions based on Labor Certification, and
  - EB-1 Outstanding Researcher Petitions.
- Permanent Residence petitions that you may “self-sponsor” *may* be done through outside counsel.
  - EB-1 Extraordinary Ability Petitions, and
  - EB-2 NIW Petitions.
- If you decide to use outside counsel to self-sponsor, you are responsible for all costs.

# HARD COSTS



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- Labor Certification:
  - \$3,000 - \$8,000 (recruitment costs + expenses).
    - Expenses might be translations, education evaluations, couriers, etc.
  - Employee's "Hiring Department" pays.
  - Always done by Fermilab's Visa Office.
  
- Form I-140 Petition:
  - \$375 + expenses.
  - Employee's "Hiring Department" pays if processed by Fermilab Visa Office.
  - Employee pays if outside counsel retained.
  
- Form I-485 Adjustment(s)
  - \$1,010 per applicant over 14 years.
  - Employee pays.
  - Prepared by Fermilab's Visa Office for employee and family, unless employee has retained outside counsel.



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**CAUTION!**

# CAUTION!



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- Not all nonimmigrant statuses allow employees to pursue permanent residence.
  - If not, must change the nonimmigrant status first.
- Not all employees are eligible for sponsorship.
  - Employees must pass their 6-month Probation period.
  - The job opportunity must be “permanent.”
    - Most “Term” jobs at Fermilab are ineligible for sponsorship.
    - “Term” Associate Scientist jobs are the only exception.

# CAUTION!



- Immigration is NOT a “science”.
  - Laws / regulations do not answer every question.
  - Agencies have informal policies / procedures to fill in gaps.
  - Agencies change interpretations without warning.
    - New interpretations apply immediately.
    - BUT paperwork might be prepared or filed years earlier.
- The immigration system is not based on precedent.
  - Previous decisions are irrelevant.
  - Decisions are based on discretion and regulatory interpretation that are, in turn, based on current policies and procedures.
  - The fact that your colleague got his permanent residence does not guarantee that you will.

# CAUTION!

- **Reality is irrelevant** to immigration
  - Must document satisfaction of required elements, using objective, 3<sup>rd</sup>-party evidence where possible.
  - Sometimes, when Agency discretion is involved, even that does not ensure an approval.



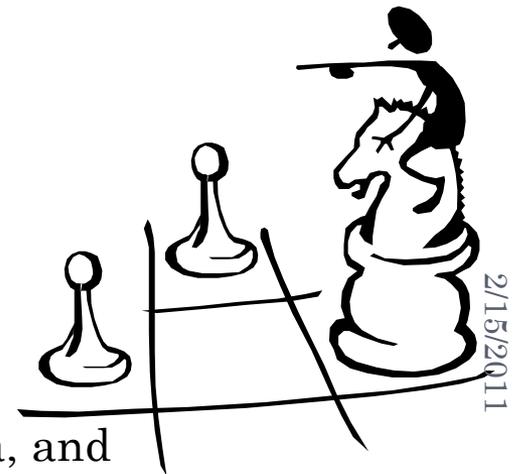
# SO YOU WANT PERMANENT RESIDENCE...

- If you are a Fermilab employee:
  - Review these materials.
  - Attend the UEC Presentation in March on “Self-Sponsoring Petitions for Permanent Residence”.
  - Review materials online at [visas.fnal.gov](http://visas.fnal.gov).
  - Schedule an appointment to talk with the Visa Office
    - After you pass your 6-months probation, and
    - Only once you have a permanent job offer with the Lab, or an Associate Scientist position or higher.



# VISA OFFICE WORKLOAD

- The Visa Office:
  - Prioritizes our workload based on:
    - The expiration of employees' nonimmigrant visa, and
    - Other work obligations in our office.
  - Evaluates each employee's situation only after the 6-month probation ends, by reviewing.
    - Your credentials and documentation,
    - The current and historic needs of the job, and
    - The current and anticipated decision trends by DOL and USCIS.
  - **Weighs the total work involved against the risk of denial.**
  - Decides on a “permanent residence strategy” based on all of the above.
    - Our decision is *final*.



# SO YOU WANT PERMANENT RESIDENCE...

- If you are a Fermilab User:
  - Review these materials.
  - Attend the UEC Presentation in March on “Self-Sponsoring Petitions for Permanent Residence”.
  - Review materials online at [visas.fnal.gov](http://visas.fnal.gov).
  
- If you are employed in the U.S.
  - Talk to your employer about sponsorship.
  - Talk to a lawyer about self-sponsorship.
- If you are not employed in the U.S.
  - Find a US employer,
  - Talk to them about your current visa deadlines (if any) and permanent residence, and
  - Talk to a lawyer about self-sponsorship.

