

ImmiCore Law

A Professional Law Corporation

First Preference Immigration Petition (EB-1)

INA Sec. 203(b)(1), 8 CFR Sec. 204.5(h)-(j)

Overview

A First Preference Immigration Petition (EB-1) is an employment-based petition for permanent residence reserved for those who are among the most able and accomplished in their respective fields within the arts, sciences, education, business, or sports. The most notable advantage for those who qualify for an EB-1 petition is the lack of a Labor Certification requirement.

EB-1A is for Extraordinary Ability in the fields of Science, Education, Business, Athletics, or Arts

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor. The Beneficiary must demonstrate national or international acclaim and recognition for achievements in the field of expertise.

EB-1B is for Outstanding Researcher/Outstanding Professor

An Outstanding professor or researcher, or EB-1(b), classification applies to aliens who can demonstrate that they are “recognized internationally as outstanding in the academic field specified in the petition.”

EB-1C is for Intercompany Transferee Executives and Managers

The Multinational Managerial or Executive EB-1(c) petition allows international companies to transfer top-level executives and managers to the U.S. as permanent residents.

The following requirements must be satisfied:

- The candidate must have been employed for one year within the past three years by either the oversees affiliate, parent, subsidiary, or branch of the U.S. employer and must work in the United States in a managerial or executive capacity; and
- The company must conduct business within the United States and another country in the regular, systematic, and continuous provision of goods or services; and
- The company must have been in existence in the United States for at least one year and must demonstrate it has the ability to pay the proffered wage.

Application Procedure

In an EB-1(a) petition, a permanent job offer is not required, and an alien may self-petition. However, in EB-1(b) and EB-1(c) petitions, a permanent job offer is required. In other words, a US employer must be the petitioner in EB-1(b) or EB-1(c) petition.

Immigrant petitions are subject to the Department of State's Visa Bulletin which indicates visa availability. Each preference category is assigned a certain number of immigrant visas per fiscal year. Each immigrant petition when filed is assigned a priority date. That priority date is then indicative of the Beneficiary's place in the queue for a visa. When the priority date is current, the Beneficiary can apply for adjustment of status by filing form I-485. This can be done concurrently with the Immigrant Petition if the preference category for a Beneficiary's country of nationality is current; or it can be filed after the Immigrant Petition is approved and when the priority date is current.