

ImmiCore Law

A Professional Law Corporation

EB-2 National Interest Waiver (NIW) Information Guide

Second Preference Immigrant Petition INA §203(b)(2), 8 CFR §204.5(k)(4)(ii)

The Second Preference Immigration Petition (EB-2) is an employment-based petition for permanent residence for an alien who is a member of the professions holding an advanced degree or an alien of exceptional ability in the sciences, arts, or business.

Generally, the EB-2 category requires an offer of employment and an accompanying labor certification. 8 C.F.R. Section 204.5 (k)(4)(i).

However, the requirement of a job offer, and the labor certification, in this category may be waived for if exemption would be in the national interest. Section 204.5(k)(4)(ii). *See also* INA Section 203(b)(2)(B).

“National Interest” is not defined by statute or regulation. Instead in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) the Administrative Appeals Office (AAO) issued a precedent decision for adjudicating national interest waiver petitions. Under the *Dhanasar* framework, after eligibility for EB-2 classification has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of evidence:

- 1) that the foreign national's proposed endeavor has both substantial merit and national importance;
- 2) that the foreign national is well positioned to advance the proposed endeavor; and
- 3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

**EB-2 National Interest Waiver
Factors Considered for the National Interest Waiver**

<p>Proposed endeavor has both substantial merit and national importance</p>	
<p>The Service considers the potential prospective impact. Prospective impact is not determined solely in geographic terms but instead the significance of the impact.</p> <p>ImmiCore will help develop this evidence. You can help support your case with evidence that describes the issue or problem that you are helping to solve or evidence of the impact you are making. You can include objective evidence from third party sources to support this such as:</p> <ul style="list-style-type: none"> - Governmental reports - News articles - Economic analysis 	
<p>Evidence that foreign national is well positioned to advance the proposed endeavor</p>	
<p>The Service considers the following factors in determining whether you are well positioned to advance the proposed endeavor:</p> <ul style="list-style-type: none"> - Education, Knowledge & Skills - Record of success in related or similar efforts; - Model or plan for future activities; - Progress towards achieving the proposed endeavor; and the - Interest of potential customers, users, investors, or other relevant entities or individuals. 	
<p>Evidence it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.</p>	
<p>The Service considers the following factors in determining whether it is beneficial to waive the requirements of a job, and thus of a labor certification:</p> <ul style="list-style-type: none"> - Whether, in light of the nature of the foreign national’s qualifications or proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; - Whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and 	

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<ul style="list-style-type: none">- Whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process.- Whether on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.	
Evidence of continued work in area of expertise within the United States	
<ul style="list-style-type: none">- Proposed work plan	