

National Interest Waiver Permanent Residency Second Preference Category

Availability: National Interest Waiver may be sought by those aliens who would qualify for categorization under the second preference Employment Based category.

Definition: A National Interest Waiver is either granted or denied by the US Attorney General based upon the national interest. Its purpose is to waive either the Labor Certification requirement or the Offer of Employment requirement, or both. National interest is not formally defined by the USCIS, however an alien is generally considered to meet the national interest test where the admission of the particular alien would provide a benefit to the country beyond a "prospective national benefit" which all exceptional ability aliens must establish prior to their admission.

TEST:

1. Evidence of fulfillment of national interest standard (Three-Pronged Test.)

- a. Alien must be seeking employment in an area of substantial intrinsic merit. (i.e. providing services in an area that benefits Americans , e.g. engineering bridges.)
- b. The proposed benefit conferred by the alien must be national in scope. (regional or local interest/benefit is insufficient; however, a regional project that benefits a national audience is sufficient (i.e. engineering a bridge in New York that enhances the national infrastructure.)
- c. Alien must show that the national interest would be adversely affected if an LCP were required. (This is the most onerous prong and is specific to the alien.)

1) The employer must show that the benefit derived from the alien's participation in the national interest field of endeavor must "considerably" outweigh the inherent national interest in protecting U.S. workers through the Labor Certification process. Essentially, the alien must show that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

This Third Prong may take into account the following factors:

- a) The alien's standing in the field;
- b) The minimum education, experience and training required to perform the services in question;
- c) The quality of the evidence;
- d) Self-employed individuals;
- e) Labor certification delays (though the significance of this factor may be greatly reduced following the PERM process);
- f) The employer's unsuccessful recruitment efforts.

For further information contact our office at 1.800.437.7313.