

# OVERVIEW OF THE NATIONAL INTEREST WAIVER



**MELTZER HELLRUNG**  
IMMIGRATION SOLUTIONS

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The National Interest Waiver (NIW) classification is for individuals with an advanced degree or exceptional ability who are requesting a waiver of the labor certification because their work is in the interest of the United States. This green card category does not require a labor market test or a sponsoring employer. The NIW classification is an EB-2 category green card.

### IN ORDER TO QUALIFY, INDIVIDUALS MUST DEMONSTRATE AN ADVANCED DEGREE OR AT LEAST 3 OF THE FOLLOWING CRITERIA OF EXCEPTIONAL ABILITY:

- Official academic record showing that you have a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to your area of exceptional ability
- Letters documenting at least 10 years of full-time experience in your occupation
- A license to practice your profession or certification for your profession or occupation
- Evidence that you have commanded a salary or other remuneration for services that demonstrates your exceptional ability
- Membership in a professional association(s)
- Recognition for your achievements and significant contributions to your industry or field by your peers, government entities, professional or business organizations
- Other comparable evidence of eligibility is also acceptable

### IN ADDITION TO AN ADVANCED DEGREE OR 3 OF THE ABOVE CRITERIA, THE NIW GREEN CARD REQUIRES THAT **ALL** OF THE FOLLOWING CRITERIA ARE MET:

- The proposed endeavor has both substantial merit and national importance.
- You are well positioned to advance the proposed endeavor.
- It would be beneficial to the United States to waive the requirements of a job offer, and thus the labor certification.

## THREE-PART TEST FOR NIW APPROVAL

### Substantial intrinsic merit

Substantial intrinsic merit includes substantially benefiting the national economy, cultural or educational interests, or the overall welfare of the United States. It is not limited solely to those endeavors that are “life or death,” but rather includes areas such as the arts, athletics and business.



### National in scope

The endeavor should be of national importance, even if it is locally or regionally focused with respect to geographic scope. For example, an engineer reinforcing bridge structures in New York would qualify, as it would have a nationwide impact on interstate commerce. But, a teacher creating a curriculum would only affect the local area, and would not have a nationwide impact.



### Serve national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications

The applicant’s skills are above and beyond those of other individuals who meet the minimum qualifications for the sponsored role, and the applicant will have an influence on the field as a whole. In many cases, a strong track record of success and acknowledgement in the field satisfies this requirement.



## NIW APPLICATION PROCESS OVERVIEW

### 1 Company and/or individual (for self-sponsors) opens a case with Meltzer Hellrung



IN ORDER TO OPEN A CASE, WE NEED THE FOLLOWING INFORMATION:

- Name of candidate
- Email address
- Job title and description for offered position
- Offered salary
- Work location
- Resume

### 2 Meltzer Hellrung reaches out to the individual to complete an online questionnaire and provide the required documentation



We will email the individual with instructions to complete this step.

### 3 Letters of recommendation

NIW applications typically include letters of recommendations from individuals who can speak to the exceptional ability of the individual. In many instances, these letters are drafted by the individual to be signed by the letter writer. We will assist with the review of these letters.



### 4 Meltzer Hellrung drafts all necessary forms and letters to file the I-140 petition

We will forward these forms and letters to the Company and/or individual (for self-sponsors) for review. The employer may choose to share these draft documents with the individual. This step may require multiple rounds of document edits depending on the complexity of the case. This step represents one of the most time-consuming portions of the process.



**5** Once all forms and letters have been finalized and all required documentation provided, Meltzer Hellrung will ship the completed petition to USCIS



**6** USCIS review of the I-140 petition

Generally, USCIS takes several months to process I-140 petitions. Premium processing is not available for National Interest Waiver I-140s. Once filed, USCIS may not immediately approve a petition. USCIS may first issue a Request for Evidence (“RFE”). Should an RFE be issued, USCIS provides about three months to respond. If we receive an RFE, we will analyze the RFE and reach out to the respective parties with a list of documents needed. Once received, we will draft the response and submit to USCIS. Once submitted, USCIS typically issues a decision within 60–90 days.



**7** Post filing outcomes

**Approval**

USCIS will approve I-140 petition and will issue an I-797 approval notice.



**Denial**

USCIS can determine that the I-140 petition is not approvable. Typically, an RFE is issued prior to a denial. If USCIS denies the I-140 petition, a written decision is issued outlining the reasons for denial. If a denial is received, Meltzer Hellrung, individual, and employer (if not self-sponsored) will have a post-decision call to determine if there were any deficiencies in the application and the recommended next steps for moving forward.



**8** Application for physical green card

When an individual’s priority date, which is the date that the I-140 was filed, becomes current, that person can file an application to get the physical green card. There are two ways to file for the green card: first, by adjusting status inside the United States, and second, by filing for an immigrant visa at a consulate outside the U.S. and second, by filing for an immigrant visa at the consulate outside the United States. The first option is more common, but some employees choose to pursue the second option as it can be faster.



If the priority date is current when filing the I-140, the I-485 to adjust status can typically be filed concurrently with the I-140. Individuals who were previously sponsored for an I-140 and have a priority date that can be recaptured may also be current at the time of the I-140 filing. There may be an additional wait time for applicants depending on the dates listed on the visa bulletin in any given month.

## NIW APPLICATION DOCUMENT REQUEST OVERVIEW



### DOCUMENTS TO BE PROVIDED BY INDIVIDUAL:

- Non-blank pages of passport
- Documentation of any previous U.S. immigration status (I-797 approval notices, electronic I-94 if already in the U.S.)
- Degrees, transcripts and any certifications received
- Resume
- Awards received
- Recommendation letters from other respected members of the field highlighting the original contributions or exceptional ability of the individual
- Any articles or publications in major trade/professional publications, newspapers or other major media written about the individual
- Any articles or publications in major trade/professional publications, newspapers or other major media written by the individual
- Evidence of memberships in associations and the requirements for membership

### DOCUMENTS TO BE PROVIDED BY COMPANY (IF NOT SELF-SPONSORED):

- Documents regarding marketing materials, presentations, press releases, pitch slide decks, brochures, process outlines, etc.
- Recent financial documents, such as tax return, audited financial statement, SEC 10-K filing, or profit and loss statement