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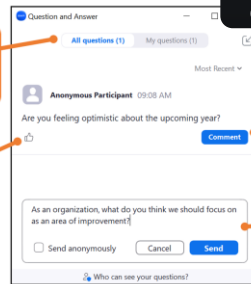
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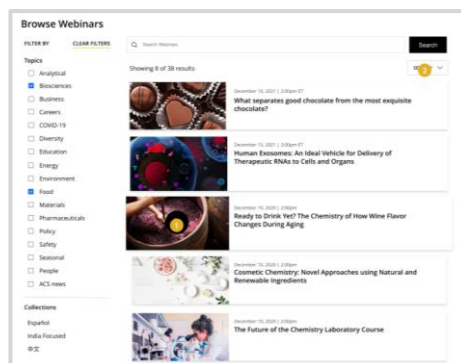
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A Scientist's Guide to U.S. Residency: Expert Tips for International Scientists



BRIAN H. GETSON, ESQ
Speaker

Partner,
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UPENN LAW SCHOOL, 1995

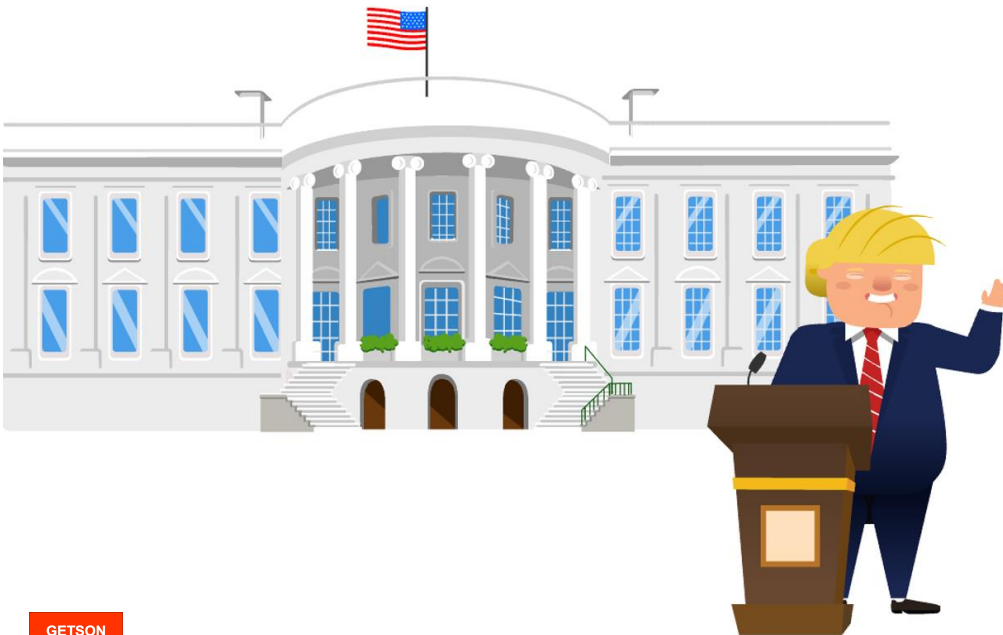
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MAINTAINING YOUR STATUS

STUDENT

F-1

WORK

**POSTDOC vs.
INDUSTRY**

HOW TO MAINTAIN YOUR STATUS

POSTDOC

OPT: 3 YEARS

H-1B: 6 YEARS +

J-1: 5 YEARS

GREEN CARD

INDUSTRY

OPT: 3 YEARS

H-1B: 6 YEARS +

O-1: INDEFINITE

GREEN CARD

OPT: 3 YEARS

CAN I APPLY FOR A GREEN CARD DURING OPT?

NEED TO MANAGE VISA BACKLOGS

TWO STEPS – I-140 & I-485

NEED TO CONSIDER EXPIRATION DATES OF OPT EAD AND STEM OPT EAD

H-1B

Postdoc:
Cap Exempt

Industry:
Visa Lottery

ODDS OF WINNING H-1B VISA LOTTERY



1 in 5, or worse

IF TRY INDUSTRY, BUT LOSE
THE LOTTERY, THEN GOING
BACK TO POSTDOC MAY BE
NECESSARY

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WHY IS H-1B BETTER THAN J-1?

H-1B:

1. Dual Intent:

Allows travel and extension of status with pending or approved I-140 NIW/EB-1 petition and pending I-485

2. Ability to extend beyond 6 years if needed (important due to visa backlogs)

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WHY YOU DON'T WANT A J-1 UNLESS YOU HAVE NO CHOICE

1. No dual intent
2. 2-year rule
3. Unfortunately, most university postdoc positions use the J-1

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WHEN TO USE THE O-1 (TYPICALLY FOR INDUSTRY ONLY)

1. If you don't win the H-1B lottery.
2. If you are subject to the J-1 2-year rule.
3. If you cannot extend H-1B beyond 6 years.
4. If you want to transition from academia to industry.

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SPECIAL NONIMMIGRANT CATEGORIES

CANADA/MEXICO

SINGAPORE/CHILE

AUSTRALIA

TN Visa

H-1B1 Visa

E-3 Visa

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PATHS TO A GREEN CARD

1. **PERM**, Permanent Labor Certification: CANNOT SELF-FILE
2. **EB-1A** “Extraordinary Ability”: CAN SELF-FILE
3. **EB-1B** “ Outstanding Researchers/Professors”: CANNOT SELF-FILE
4. **EB-2 NIW** “National Interest Waiver”: CAN SELF-FILE

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GREEN CARD FILING STRATEGY/TIMING

1. HAVE A ROADMAP
2. HAVE A PLAN B / BACKUP PLAN



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GREEN CARD FILING STRATEGY/TIMING

1. WHEN DOES YOUR CURRENT STATUS EXPIRE AND CAN YOU EXTEND YOUR CURRENT STATUS OR CHANGE STATUS? **HAVE A ROADMAP**
2. ARE YOU IN INDUSTRY OR POSTDOC?
3. HOW STRONG IS YOUR CASE NOW AND WILL IT IMPROVE IN THE NEAR FUTURE?
4. FAMILY AND JOB CONSIDERATIONS.

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GETTING A GREEN CARD WHILE AVOIDING PERM LABOR CERTIFICATION

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DECEMBER 2024 VISA BULLETIN

	CHINA EB1	INDIA EB1	WORLD EB1
FINAL ACTION	11/08/2022	02/01/2022	C
DATES FOR FILING	01/01/2023	04/15/2022	C

	CHINA NIW	INDIA NIW	WORLD NIW
FINAL ACTION	03/22/2020	08/01/2012	03/15/2023
DATES FOR FILING	10/01/2020	01/01/2013	08/01/2023

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EXPERT TIP ON STRATEGY/TIMING



Sometimes it makes sense to file a NIW now and an EB-1 later

Ex: You are on OPT with 175 cites and no significant positive factors and you are unlikely to win an EB-1 and if USCIS denies you once they are likely to deny you twice.

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EXPERT TIP ON STRATEGY/TIMING



1. File EB-1 once your NIW is approved after strengthening your case (higher cites, etc.) and priority date of NIW is current in EB-1 as can substitute the priority date of the NIW into the EB-1.

2. Odds of EB-1 approval are HIGHER because your case is stronger & USCIS knows you have an approved NIW.

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EXPERT TIP ON STRATEGY/TIMING



3. If you have a strong EB-1 case, you should not wait to file your EB-1 but should still file a NIW as insurance in case your EB-1 is denied.

4. You can't premium process the I-485 so it typically does not make sense to premium process an I-140 if you need to wait to file the I-485 because of a backlog unless spouse needs an H-4 EAD.

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HOW TO WIN AN EB1/NIW CASE



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METHOD 1

RECEIPT OF A MAJOR,
INTERNATIONALLY
RECOGNIZED AWARD



Good luck with this method!

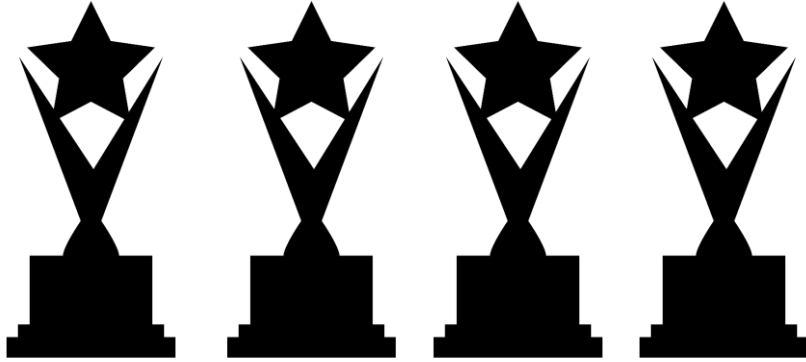
METHOD 2

EB-1A: SATISFY 3 OF THE CATEGORIES

EB-1B: SATISFY 2 OF THE CATEGORIES

NIW: ALL EVIDENCE COUNTS - NO SET CATEGORIES

1. RECEIPT OF NAT'L OR INT'L RECOGNIZED AWARDS IN FIELD



2. ACHIEVEMENT-BASED MEMBERSHIP IN ASSOCIATIONS

FELLOWSHIP
LEVEL



3. PUBLISHED MATERIAL ABOUT YOU AND YOUR WORK IN JOURNALS OR MAJOR MEDIA PLATFORMS



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4. PARTICIPATION AS A JUDGE OF OTHERS

PEER
REVIEW



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5. ORIGINAL CONTRIBUTIONS OF MAJOR SIGNIFICANCE

A. OBJECTIVE EVIDENCE INCLUDING CITATION LEVEL

B. REFERENCE LETTERS

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A. ORIGINAL CONTRIBUTIONS: OBJECTIVE EVIDENCE

1. GOOGLE SCHOLAR CITATION PAGE
2. PUBLICATIONS COUNT EVEN IF NOT 1ST AUTHOR
3. CONFERENCE PRESENTATIONS / PEER REVIEW
4. COPIES OF ARTICLES CITING YOUR WORK / MEDIA
5. INTEREST IN YOUR WORK BY OTHERS / FUNDING
6. AWARDS / MEMBERSHIP / PATENTS (ESP. COMMERCIALIZED)

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B. ORIGINAL CONTRIBUTIONS: LETTERS

1. FIVE INDEPENDENT "RECOMMENDATION" LETTERS
2. SUPERVISOR LETTERS
3. PRIVATE COMPANY LETTERS
4. GOVERNMENT AGENCY LETTERS
5. USE OF WORK BY OTHERS WHO HAVE CITED YOU
6. COLLABORATION LETTERS
7. ORAL CONFERENCE PRESENTATION LETTERS
8. AWARDS / MEMBERSHIP / PEER REVIEW / FUNDING

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HOW WE WRITE THE LETTERS

RESEARCHERGREENCARD.COM / WHY-CHOOSE-GETSON / RECOMMENDATION-LETTERS

1. YOU OUTLINE YOUR RESEARCH
2. Q&A FROM OUR SCIENCE WRITERS
3. WE WRITE THE LETTERS FOR YOUR REVIEW

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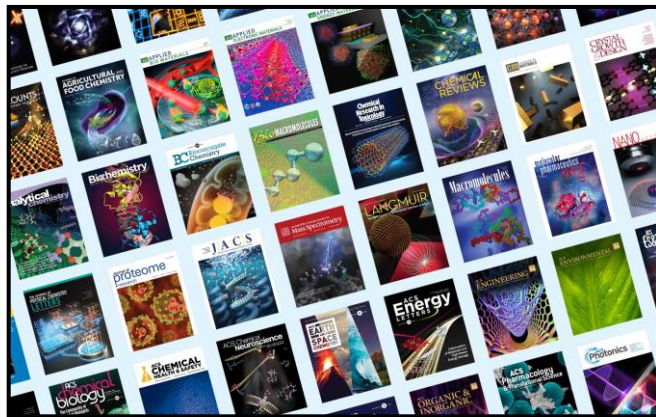
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WHY OUR LETTERS ARE EFFECTIVE

- A. INDEPENDENT LETTERS DISCUSS ALL RESEARCH
- B. WE WRITE SUPPLEMENTAL LETTERS
- C. WE AVOID PROBLEMATIC LANGUAGE
- D. WE USE EXPERIENCED SCIENCE WRITERS TRAINED AT OUR LAW FIRM

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6. AUTHORSHIP OF JOURNAL ARTICLES IN THE FIELD, IN MAJOR TRADE PUBLICATIONS OR MAJOR MEDIA



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7. **DISPLAY OF WORK AT ARTISTIC EXHIBITIONS OR SHOWCASES**

DOES NOT APPLY!

8. **CRITICAL ROLE**

PERFORMANCE IN A LEADING OR CRITICAL ROLE FOR
ORGANIZATIONS THAT HAVE A DISTINGUISHED
REPUTATION (DEPARTMENT OR DIVISION NOW COUNTS)

9. HIGH SALARY COMPARED TO OTHERS IN THE FIELD



10. COMMERCIAL SUCCESS IN THE PERFORMING ARTS AS SHOWN BY BOX OFFICE RECEIPTS OR MUSIC/VIDEO SALES

DOES NOT APPLY!

EB-1A LEGAL STANDARD

1. SMALL PERCENTAGE AT THE VERY TOP OF THE “FIELD”
2. SUSTANIED NAT’L OR INT’L ACCLAIM
3. KAZARIAN STANDARD: EVEN IF SATISFY 3 CATEGORIES,
YOU CAN STILL BE DENIED!

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EB-1B LEGAL STANDARD

1. INT’L RECOGNITION AS OUTSTANDING
2. TENURE OR TENURE TRACK TEACHING OR PERMANENT
RESEARCH POSITION (ACADEMIC OR INDUSTRY)
3. 3 YEARS EXPERIENCE
4. KAZARIAN STANDARD: EVEN IF SATISFY 2 CATEGORIES,
YOU CAN STILL BE DENIED!

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EB-1B IS EMPLOYER BASED

1. BELONGS TO THE EMPLOYER, NOT YOU!
2. YOU MUST STAY IN THE JOB FOR **180 DAYS AFTER FILING I-485**
AND THEN CAN PORT TO “SAME OR SIMILAR” POSITION. THAT
COULD BE A LONG TIME WITH THE BACKLOG.

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EB-2: NIW: NATIONAL INTEREST WAIVER

1. Hold an advanced degree, or a BA/BS with 5 years experience
2. Demonstrate that your permanent employment is in the national interest

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MATTER OF DHANASAR (AAO DECISION):

CIS may grant an NIW if:

1. Your proposed endeavor has substantial merit and national importance,
2. You are well positioned to advance the proposed endeavor, and

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“ON BALANCE”

3. “On balance”, it would be beneficial to the U.S. to waive the job offer requirement and labor certification.

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PREMIUM PROCESS

EXPEDITE YOUR EB-1 OR NIW PETITION FOR \$2,805.

DECISION WITHIN 15 DAYS FOR EB-1 AND 45 DAYS FOR NIW

MORE LIKELY TO RECEIVE AN RFE / DENIAL

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DEFINE YOUR EB-1A/NIW “FIELD” VERY CAREFULLY

1. BROAD ENOUGH TO COVER ALL OF YOUR RESEARCH
2. BUT NOT TOO BROAD!
3. BE CAREFUL: ANY NEW JOB PRIOR TO GREEN CARD
MUST BE WITHIN YOUR DEFINED FIELD

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WHY CHOOSE GETSON?

1. MONEY BACK GUARANTEE FOR MOST CLIENTS
2. WE EMPLOY SCIENCE WRITERS
3. 25+ YEARS OF EXPERIENCE

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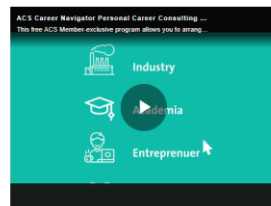
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