

**Related Services**

Immigration

## 10 Keys to Attaining Permanent Resident Status for Postdoctoral Scholars

**Legal Update**

02.27.2019

By Immigration Group

*This article was originally published on April 20, 2015, and updated on February 27, 2019.*

This article focuses on options available to Postdoctoral Scholars to attain permanent residence based on their professional skills. While U.S. immigration law contains various pathways to permanent residence, such as family-based (largely, but not exclusively marriage to a U.S. citizen), fear of persecution (laws of asylum and refugee) and miscellaneous programs (the most common of which is the Diversity Lottery program), this article is limited to strategies available to Postdocs leveraged off of their employment skills.

This article is further limited to instances in which Postdocs can sponsor themselves for permanent residence under the self-petitioned provisions of U.S. immigration law. While in employment-based immigration cases, it is quite advantageous for the employer to petition (i.e., sponsor) the foreign national for permanent residence, in the Postdoc situation, the position itself is temporary and as a consequence, the employer cannot file an immigrant visa petition since that requires a permanent position. This deprives the Postdoc of the goodwill and deference accorded to an employer's sponsorship petition and instead, forces the Postdoc to sponsor himself/herself for permanent residence through the EB1 provisions as "Alien of Extraordinary Abilities" or the EB2 National Interest Waiver classification.

The central challenges facing Postdocs in attaining permanent residence essentially concern four (4) basic realities:

1. Postdocs generally lack the employer's sponsorship for permanent residence given that they by definition hold temporary rather than permanent positions. As such, they lose much of the deference and goodwill in the eyes of the U.S. immigration system that would be accorded to an official request for permanent residence from an esteemed institution of higher education.
2. Postdocs possess highly advanced but oftentimes still evolving skills sets in cutting-edge fields of scientific and academic endeavor. In many instances, their full claim to holding extraordinary abilities or national contribution lies in the future

rather than in their past or current endeavors.

3. Related to the above, Postdocs are junior in their careers. They oftentimes lack the normal indicators of academic achievement, such as: lengthy publication records, citations, review articles, independent grant funding and invited presentations. These particular metrics are quite valued by U.S. Citizenship and Immigration Services (USCIS) examiners in adjudicating requests for permanent residence.
4. But Postdocs are unquestionably a major contributor to advancements in a wide range of endeavors that carry significant benefits to the country as a whole and in the course of their work, they oftentimes attain advanced original insights and achievements that mark them as outstanding and in many cases, extraordinarily talented scientists and academic figures.

Postdocs largely present a complex, challenging profile of emerging but highly promising academic figures who are working in areas of profound importance to the country and, oftentimes, humankind. In many instances, they are able to navigate the aforementioned challenges and successfully attain permanent residence under their own sponsorship. This article presents 10 points of guidance to assist Postdocs in doing so.

Before delving into specific pointers on constructing effective immigration petitions for Postdocs, it is necessary to keep in mind the three (3) central structural challenges facing Postdocs in seeking permanent residence under their own sponsorship:

1. Meeting the legal criteria of extraordinary ability or national benefit, since ultimately these are the standards appearing in U.S. immigration law that need to be established to the USCIS examiner for permanent residence;
2. Dealing with the quota backlogs, particularly those affecting natives of China and India, since this becomes an important consideration in developing a suitable immigration strategy; and
3. Dealing with the inherent discretion vested in USCIS examiners in making determinations of such amorphous terms as “extraordinary ability” and “national benefit,” which legitimately lend themselves to differing interpretations.

As briefly noted above, there are two basic provisions in U.S. immigration law that enable a Postdoc to self-sponsor for permanent residence: the EB1 provisions for Aliens of Extraordinary Ability and the EB2 National Interest Waiver provisions. Before constructing guidelines on how to convince the USCIS examiner that a Postdoc applicant meets these standards, let us examine the basic legal definition of these two terms.

Under our immigration laws, extraordinary ability (EB1) essentially involves four (4) central concepts:

# 10 Keys to Attaining Permanent Resident Status for Postdoctoral Scholars

1. That the applicant has demonstrated sustained national or international acclaim in the area of her professional endeavor;
2. That the applicant has risen to the top of their profession so as to rank in the small percentage of experts in her specific field;
3. That the applicant will continue to work in her area of professional expertise upon her attainment of permanent residence; and
4. That her professional services will prospectively benefit the United States.

The National Interest Waiver (EB2) provisions require a demonstration of three core elements:

1. That the applicant's work and proposed endeavor has both substantial merit and national importance;
2. That the applicant is well positioned to advance in a meaningful manner this proposed endeavor; and
3. That on balance, it will be beneficial to the United States if the applicant attains permanent residence.

While the schematic appearing above is quite simplified and omits the many nuances and subsets of the legal criteria required for a successful self-petitioned case, it provides a useful analytic model in developing cases for permanent residence. Also, it highlights two key concepts that somewhat coalesce both filing strategies:

1. They both require that the applicant show superior professional achievement that either rises to the level of extraordinary ability or suggests the ability to make a national impact; and
2. They both require a showing that overall U.S. national interests will be enhanced if the self-petitioned applicant is allowed to remain permanently in the United States.

These key concepts are presented in highly structured written submissions to USCIS examiners working in two large, central adjudication centers – one located in the Dallas, Texas area and the second in Lincoln, Nebraska. As noted above, the criteria for each type of self-petitioned submission differs and needs to stress different points. But the architecture of a typical self-petitioned submission – either EB1 Extraordinary Ability or EB2 National Interest Waiver – is identical and consists of the following elements:

1. I-140 immigrant visa petition (i.e., the official U.S. Government form) that is signed by the individual Postdoc applicant;
2. A strong, comprehensive letter generally signed by the applicant's mentor presenting the justifications for approval, which needs to explicitly, coherently and effectively address the core considerations listed above;

3. Outside support letters from colleagues in the profession that substantiate the basic points appearing in the mentor's letter and establishes a level of renown and recognition for professional excellence of the Postdoc applicant;
4. The applicant's C.V. which should be a powerful and revealing statement that further addresses key points of interest to the U.S. examiner;
5. Evidence of outstanding abilities in the field in an "exhibit list," such as: publications; citations; presentations; grant funding; judging the work of others; etc.
6. Materials establishing that the applicant's work is beneficial to the national interest of the United States – or in other words, reasons that the applicant's ongoing residence and employment will be a matter of national benefit and merit.

The points raised above are intended to provide the basic background context for the two grounds defined in U.S. immigration law that would enable a Postdoc to file a self-sponsored request for permanent residence: EB1 Extraordinary Ability or EB2 National Interest Waiver. What appears below are 10 basic points that are foundational and essential to winning self-petitioned cases for permanent residence.

## Essential Key #1: Understanding the Immigration Examiner

The basic, cardinal consideration here is quite simply the following: The USCIS examiner is NOT a professional peer of the Postdoc applicant. The USCIS examiner is a government official presumably and understandably with little or no knowledge or perhaps even interest in a Postdoc's field of endeavor. As such, basic fundamental concepts and terminology that are quite familiar within the Postdoc's circle of professional colleagues might be quite unfamiliar to the examiner who ultimately will be making a profound decision as to whether or not to authorize the granting of permanent residence.

In addition, the USCIS examiner is probably quite time constrained in adjudicating self-petitioned requests for permanent residence – perhaps limited to 15-20 minutes to issue a determination.

Given these twin constraints of subject matter unfamiliarity and significant time constraint, a successful filing needs: to present a clear narrative structure; to define and contextualize scientific terms and concepts; to get the key concepts highlighted and presented; to carefully assess the exhibits presented to make sure that they qualitatively advance the key concepts that need to be established; to try to make the overall filing relevant and important to the realities of the USCIS examiner and his/her own family.

Above all, the applicant needs to understand that the objective of the submission itself is to lay out a claim for extraordinary ability and/or national contribution. As such, all materials should ultimately be focused on and contribute to these points rather than getting diverted to extraneous tangents.

## Essential Key #2: Get Involved in Your Case

As suggested above, a major objective is to translate the complex, cutting-edge work of a Postdoc into an easily understood, transparent narrative that can be understood and appreciated by the USCIS examiner. This requires hard work by the Postdoc applicant, oftentimes with the guidance of an immigration attorney. The Postdoc applicant needs to be highly involved in the case in terms of explaining the nature of his work; ensuring that in simplifying the discussion that key points are not unduly distorted or misrepresented; enlisting the support of his mentor and outside referees; and providing appropriate documentation to establish and reinforce pivotal points of a case.

As an immigration attorney, I essentially have one main expectation of my Postdoc clients: Working within a framework that I provide, I expect my clients to provide me with essentially a seminar on the work they are doing and its scientific or social importance. We must then work collaboratively to construct a narrative that will convince the USCIS examiner, a lay reader, to understand and approve the case. In a way, the Postdoc is the source of wisdom and knowledge and the immigration attorney is the translator of this knowledge into an effective and compelling immigration narrative.

## Essential Key #3: Critical Role of the Mentor

The key component of an effective self-petitioned case for permanent residence is a strong, comprehensive statement from the mentor describing – and advocating – for the Postdoc's claim to holding extraordinary abilities and/or contributions to the national welfare. In a sense, the mentor should serve as the attorney's alter ego – that is, the agent who can effectively and with considerable credibility provide a meaningful assessment of the Postdoc applicant that meets the legal criteria required for approval of a case.

Among the key points for a successful mentor letter: it should be comprehensive and address the many points – including national benefit – appearing in the law; it needs to establish the professional stature and credibility of the mentor himself/herself; it needs to be a credible statement that usually refrains from overblown, hyperbolic language; scientific terms need to be defined and the information presented clearly and contextualized; it needs to be drafted with the end in mind – that is, what really is the immigration examiner looking for in order to approve the case; the structure needs to be transparent and clearly presented, organized and labeled.

One effective drafting strategy that we use is to present the key and most convincing points at the beginning of the letter in bulleted fashion so as to direct the USCIS examiner to the main reasons that would justify approval of the case. This drafting technique has proven to be highly effective in allowing the USCIS examiner to quickly and easily identify the main reasons justifying approval of the case and it helps to create a favorable first impression of the foreign national as an individual of

attainment and professional accomplishment. The mentor's letter is oftentimes (in fact, usually) quite lengthy given the rich complexity of the information to be presented, but the USCIS examiner may only budget a short period of time to review the letter. Given this reality, we literally list out in the letter's opening section in bullets the key points that would merit approval, while the full body of the letter is used to explain fully the salient points that have been initially presented.

## Essential Key #4: Importance of Outside Letters of Support

Outside support letters play an important and oftentimes critical element in a successful self-petitioned case. These letters serve three important functions: 1) they substantiate the central points appearing in the mentor's support letter; 2) they add an additional perspective on the Postdoc's work; and 3) they confirm that the Postdoc possesses widespread recognition within the professional field.

In developing a list of referees for a self-petitioned case, it is wise to seek support letters from figures working throughout the United States, as geographic diversity suggests the Postdoc's widespread renown. USCIS has recurrently expressed its preference that the letters originate from individuals working outside the Postdoc's place of employment so as to avoid the appearances both of nepotism and an accommodation to the Postdoc rather than a rigorous, dispassionate assessment of academic merit and importance.

While opinions differ on this point, our view is that the CVs of the referees should be omitted since, as noted in numerous USCIS decisions, the CVs of these more senior figures oftentimes dwarf the accomplishments of the Postdoc applicant so as to undermine a claim to holding outstanding and/or extraordinary abilities. In the absence of CVs, it is important in the text of the letter to establish the referee's credibility and high professional stature.

While most letters normally will be written by university investigators, letters from professional journals, government bodies and professional societies carry considerable probative weight. Letters from figures in private industry can also be quite valuable in advancing the notion that the Postdoc's work carries the possibility of commercialized success and even job creation.

On the all important and recurrently asked question as to the number of recommended outside letters to include in a self-petitioned case, opinions differ, but generally the figure should be in the 7-10 range.

## Essential Key #5: Making the CV Into an Advocacy Piece

Normally, CVs are created largely for professional peers and as such, their structure presupposes a certain orientation and level of understanding of the reader. But in the immigration context, the reader is a USCIS examiner who is not only a lay reader, but presumably quite pressed for time. Since the CV is an opportunity to showcase the

Postdoc applicant, it makes a great deal of sense to adopt it not only to the background of the reader, but to have it contribute to the establishment of the Postdoc's stature as having extraordinary abilities and/or contributing to the national welfare.

Some of the drafting measures that help in this regard are: write out an introductory short narrative statement that highlights the work and importance of the Postdoc applicant; identify the Postdoc's main research interests; define important scientific terms appearing in the CV; highlight and explain the importance of particularly major articles; given that metrics are an important consideration in many USCIS adjudications, focus and highlight on the publication record, including non-peer reviewed publications, if appropriate; highlight to the extent possible the number of citations, funding awards and presentations; address the national benefit that has or could arise from the Postdoc's ongoing residence and employment in the United States.

## Essential Key #6: Preeminence of Employing Institution

It is true that a Postdoc is filing a self-sponsored petition for permanent residence rather than receiving "official" institutional sponsorship. Nevertheless, the preeminence of the Postdoc's employing institution reflects quite heavily on the capabilities of the Postdoc. After all, there is a logical connection – something akin to "guilt by association" – between the preeminent stature of the Postdoc's employing institution and the stature and capabilities of the Postdoc. In short, the institution provides a nurturing environment for the Postdoc's academic achievement and it is important to develop this synergy in a thorough manner.

This nexus is obviously quite immediate if the specific Program in which the Postdoc works is highly ranked and preeminent. But in addition, it is a legitimate and relevant point of discussion to present the overall stature and contributions of the entire institution. Among the institutional factors that would impact beneficially a self-petitioned case would be: high national rankings of the institution and/or its specific departments or programs; institutional levels of research grant funding; highly advanced laboratories or technological infrastructure; specific breakthroughs achieved at the institution, even if not in the Postdoc's own field; the presence of influential figures on the faculty and research staff, particularly highlighting Nobel Laureates, members of the Academy of Sciences and/or highly prestigious professional societies (e.g., Institute of Medicine, Howard Hughes Fellows, etc.).

## Essential Key #7: Important Role of Metrics

As repeatedly stated above, the terms "extraordinary ability" and "national interest" are, by definition, amorphous terms that lend themselves to subjective judgment. Perhaps as a result USCIS examiners place a great deal of emphasis in self-petitioned cases on metric factors. Given this emphasis, it behooves the Postdoc applicant to present responsive materials that suggests a high level of measurable

productivity and achievement.

Certainly, the number of publications, citations and presentations are important metrics in self-petitioned adjudications. But what other metrics could be used to impact the USCIS examiner? Among other factors that could be explored are: level of direct and indirect funding support for the Postdoc's research work; start-up funding commitments for the establishment of the laboratory in which the Postdoc works; evidence that the Postdoc has served as a reviewer of articles for journals; high impact factors of journals in which the Postdoc has published; speculation on commercial success, capital formation and job creation resulting from the Postdoc's research work; patents held, including patents or certificates held in the Postdoc's home country; national cost savings (such as reduction in medical expenses) or decreases in mortality rates resulting from the Postdoc's work; etc.

In short, there is a great deal of subjectivity involved in the adjudication of self-petitioned cases and many USCIS examiners exhibit a negative disposition to self-petitioned cases, possibly under a rationale that the institution would actively sponsor an individual of truly extraordinary abilities and/or national importance. The development of quantitative and objectively presented metrics oftentimes provide the USCIS examiner with a measurable grid of objectively stated factors that can be a determinative feature in the success of a case.

## Essential Key #8: Defining the Professional Field

The regulations defining the term "extraordinary ability" specifically refer to that small percentage of individuals who have "risen to the top of their field." This raises the question as well as the opportunity to define the field of endeavor, since by narrowing in a legitimate and credible manner the control group, it may be more plausible to establish that the Postdoc has indeed risen to the very top of his professional field.

Consider the situation of an Academic Cardiologist doing genetic studies on the use of stents to address complications in the peripheral circulatory system. What is the professional field of this individual? Is it Cardiology, which is a broad and heavily populated area comprised of many stellar figures, which might well reduce the ability of the Postdoc to show that they have risen to the top of the field? Or is it a slightly narrower although still quite broad discipline of Genetic Cardiologists? Or is the professional field a more narrowly defined field of Genetic Cardiologists of the Peripheral Vascular System, as it may be within this narrowly defined area that the Postdoc has exhibited advanced capabilities and achievements that mark her as a top figure in the field?

Along analogous lines of logic, it is important to carefully define the professional field of endeavor, as in many cases, this will identify an appropriate control group in which the Postdoc excels to the point of being at the very top. The field needs not only to be identified, largely in the mentor's letter, but also credibly justified as being the



relevant field for contextualizing the Postdoc's work. This should be an important and proactive measure as it is a major component in framing the self-petitioned case in an appropriate manner that will establish the Postdoc's true stature, particularly in certain emerging professional fields of endeavor.

## Essential Key #9: National Importance of the Field of Endeavor

The whole notion of the Postdoc's substantial contribution to the national welfare obviously stands at the core of National Interest Waiver cases. But the statute appearing in our immigration laws for "Aliens of Extraordinary Ability" also overtly requires a showing that the applicant will contribute prospectively to the betterment of the United States. In short, there is a high level of coalescence in terms of the national value of a Postdoc's work to the national welfare appearing in either an EB1 Extraordinary Ability case or an EB2 National Interest Waiver case.

There is usually a great deal of information, some of it almost intuitive, on the national benefits of a Postdoc's work. But do not assume that this will be apparent to the USCIS examiner. Rather, it is important to thoroughly review both the benefits of the Postdoc's work on a national level and to highlight that the Postdoc will play a major, impactful role in the attainment of these beneficial objectives.

For Postdocs working in the biomedical sciences, relevant factors could include: the prevalence of the disease being investigated by the Postdoc; level of national expenditures on treatment of the disease and the potential cost savings from the Postdoc's work, if successful; beneficial impact on mortality rates; quantitative measures of reducing periods of workplace absence. In the field of business, USCIS has been quite receptive to cases in which an applicant's work contributes to job and capital formation, or takes innovative technologies from the laboratory into the marketplace. In the arts, one might focus on the role of the arts in enhancing our national experience and building community.

The point is that the Postdoc's work needs to be linked to broader national benefits rather than considered solely in a theoretical construct. This is not only a key point appearing in the law, but it relates perhaps more fundamentally to a point earlier made, which is the importance of engaging meaningfully with the USCIS examiner by highlighting the real, palpable benefits that could accrue from the approval of the self-petitioned case.

## Essential Key #10: Applicant Has the Burden of Proof

A vital point that oftentimes is overlooked is that the Postdoc applicant has the burden to convince the USCIS examiner to approve the case. It is, therefore, up to the applicant to prove the merits of the case and it is not up to USCIS to disprove matters. Rather, the USCIS has to be convinced that the Postdoc applicant meets the legal standards that have been established in self-petitioned cases for Extraordinary Abilities and/or National Interest Waivers.

# 10 Keys to Attaining Permanent Resident Status for Postdoctoral Scholars

This essential keys appearing above have been set forth precisely to provide guidance on how the Postdoc applicant can sustain his burden of proof. It further suggests that petitions need to be transparently constructed and organized so as to guide the USCIS examiner to the key points that should be considered. In many instances, it requires a close collaborative effort between the Postdoc applicant and immigration legal counsel to mobilize their respective talents in order to present effective and approvable self-petitioned cases leading to the attainment of permanent residence.

Ultimately, Postdoctoral Scholars are major contributors to advancements in their professional fields that serve to the benefit of the nation and this paper has sought to suggest how to harness and describe this rich productive work in a manner that will enable Postdocs to successfully self-petition for permanent resident status.