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A PROFESSIONAL CORPORATION

National Interest Waiver

Certain individuals may be eligible for a National Interest Waiver (“NIW”). An NIW means that the U.S. government will issue a green card without the requirement of a job offer and without the lengthy labor certification process.

To qualify, the foreign national must (1) possess the equivalent of a U.S. Master’s degree or higher *or* (2) prove that he/she is an individual of “exceptional ability.” To show “exceptional ability,” CIS requires documented evidence of *at least three* of the following:

- § A degree from a college or other institution of learning related to the area of expertise;
- § Evidence of ten years of full-time experience in the occupation;
- § A license or certification to practice the occupation;
- § Evidence of remuneration for services which demonstrates exceptional ability;
- § Evidence of membership in professional associations;
- § Evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities, or professional and business organizations.

In addition to these items, the applicant will need to present evidence to CIS of *the “national interest” importance* of his/her work or research. That is, the applicant will need to show how his/her work or research advances the interests of the U.S., such as improving the health of U.S. citizens, improving working conditions, advancing the education of U.S. children, etc.

As the result of a 1998 court decision, the CIS also now requires evidence of the following in order to support a national interest waiver:

- § Evidence that the benefits of the alien's work (A) are national in scope, (B) benefit more than a particular region of the country, and (c) will involve no adverse impact to other regions of the country, but in fact will benefit other regions of the country.
- § Evidence that the alien's work is in an area of substantial intrinsic merit.
- § Evidence that the alien has achieved a degree of expertise significantly above that ordinarily encountered in his field.
- § Evidence that the national interest of the United States would be adversely affected if a labor certification were required.
- § Evidence that the alien is not seeking a national interest waiver for the purpose of ameliorating a local labor shortage.
- § Evidence that the alien is responsible for innovative work which serves the national interest.
- § Evidence that the alien's past record of prior achievement justifies projections of future benefit.

National Interest can be shown in many ways:

- § In **business cases** it is important to show the key role that the alien will hold in a company that plays a significant role in the national economy.
- § In **scientific or medical research fields**, it is useful to explain how the alien's research will provide an economic or social welfare benefit, such as development of new telecommunications technologies, increasing the health of pre-mature infants, or advancements in the efficiency of drug-delivery systems.
- § Waivers can also be granted for **unique contributions** which can be expected to improve wages and working conditions, provide affordable housing, improve the U.S. environment or otherwise benefit the U.S.
- § Persons holding Ph.D.s or Master's Degrees may also be able to use their substantial contributions to scientific advancement to qualify for a national interest waiver.

STRATEGY TIP: *National Interest Waivers may be subject to increased scrutiny by the CIS due to the increased popularity of this exception to normal green card procedures. Your exceptional ability or advanced degree employee should consult with an immigration expert to decide whether grant of the NIW is likely, based upon the specific facts and circumstances of the particular case.*