10 KEYS TO THE KINGDOM OF PERMANENT RESIDENCE FOR POSTDOCTORAL SCHOLARS AND RESEARCHERS:

(GUIDELINES LEADING TO THE “GREEN CARD”)

IOWA STATE UNIVERSITY
March 17, 2016

Fredrikson & Byron, P.A.
OR...
GOING IT KIND OF ALONE TOWARD PERMANENT RESIDENCE
Focus of Program:

Providing Postdocs and Junior Scientists with Tools to Seek Permanent Residence Based on their Professional Work
What are the Basic Challenges:

1) Absence of Employer Sponsorship
2) Evolving rather than Demonstrated Skill Set
3) Junior in Careers (Lack of Metrics)
4) Doing Important, Cutting-Edge Work
THE FIVE BASICS TO IMMIGRATION:

1. All Foreign Nationals Need Visa Permission
2. Goal: Match Up Your Position to Appropriate Visa Status
3. Counterintuitive Issues in Immigration
4. Employer Normally Controls the Process
5. Narrow Right to Self-Sponsor for Permanent Residence
BASIC STRATEGY OPTIONS FOR PERMANENT RESIDENCE

- Family-Based
- Employment-Based
- Fear of Persecution
- Miscellaneous
Fundamentals of Employment-Based Permanent Residence:

Employer Sponsored

Self-Sponsored
EMPLOYMENT-BASED PATHWAYS

• Employer-Sponsored
  • Labor Certification Application
  • Outstanding Professor & Researcher (EB-1/2)
EMPLOYMENT-BASED PATHWAYS
(CONT)

• Self-Sponsored
  • Alien of Extraordinary Abilities (EB-1)
  • National Interest Waiver (Non-Clinician) (EB-2)
  • National Interest Waiver (Clinical Physician) (EB-2)
The Three Basic Structural Challenges:

- Meeting Legal Criteria: Extraordinary Ability or National Interest
- Dealing with the Quotas
- Dealing with USCIS Discretion
A Few Words on the U.S. Quota System
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<tr>
<th>EMPLOYMENT PREFERENCES</th>
<th>ALL COUNTRIES except:</th>
<th>CHINA</th>
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# Final Decision Chart – March 2016

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VISA BULLETIN: Updates Available Monthly

Two Basic Self-Petitioned Filing Options:

**EB–1**
Alien of Extraordinary Ability

**EB–2**
National Interest Waiver
4 Basic Concepts to EB1
Extraordinary Ability
(3/10 Rule)

• Sustained national or international acclaim in professional area
• Risen to the top of the professional field/small percentage of experts
• Will continue to work in area of professional expertise
• Prospective Benefit to the United States
3 Basic Concepts to National Interest Waiver

- National in Scope
- Intrinsically Meritorious
- Applicant so Outstanding as to be able to make a Significant National Impact
How do These Two Filing Theories Differ?

**EB-1**: Inwardly Directed
- 75%: Ability of Applicant
- 25%: National Benefit

**EB-2**: Outwardly Directed
- 40%: Ability of Applicant
- 60%: National Benefit

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How Do These Two Filing Theories Coalesce?

- Applicant Needs to Show Superior Professional Achievement
- Significant Benefit to U.S. National Interests
Architecture of Self-Petitioned Filing:

What Documents/Materials are Presented to Immigration Examiner?
• I-140 Immigrant Visa Petition (Self-Signed)

• Main Letter of Support (Recommended: External Signature)

• Outside Letters of Support

• Alien’s C.V.
• Indicia of Extraordinary Ability
  • Citations to Work
  • Publications
  • Awards & Commendations
  • Reports on Work

• National Importance of Work
10 Essential Keys to Successful Self-Petitioned Immigration Cases
Essential Key #1:

Understanding the Immigration Examiner
WHO IS THE USCIS EXAMINER?
Basic Assumptions:

- Is a Lay Reader
- Not Professional Peer
- Lack of Subject Matter Familiarity & (Perhaps) Interest
- Constrained in Time
Essential Key #2:

Get Involved in Your Case
Roles of Applicant and Attorney:
Creating a Focus-Driven Professional Collaboration
Essential Key #3:

Critical Role of Mentor
Basic Role:

- Most Important Single Component of Case
- Credibility, Knowledge, Insight
- Primary Advocate for Approval
- Attorney is Alter Ego
Substantive Elements:

- Comprehensive Statement
- Address Implicitly Legal Points
- Preserving Credibility
- Demystify the Subject Matter
- Drafted with End in Sight
- Transparent Structure
Drafting Suggestions:

- Use of Bulleted Points
- Get Main Points at Outset of Letter
- Define Terms and Concepts
- Avoid Hyperbolic Language
- Guide USCIS Examiner through Merits of Case
- Create Overall Framework for Entire Submission
Essential Key #4:

Importance of Outside Letters
Role of Outside Support Letters

3 Goals:

• Substantiate Central Points of Mentor’s Letter
• Provide Additional Perspective
• Suggest National Recognition of Applicant
Importance of Geographical & Institutional Diversity:

- Counterintuitive Bias Against Letters from Work Colleagues
- Appearance/Reality of Arms Length Relationships
Role/Involvement of Mentor –

Getting Outside Support Letters
Sources of Letters/
Role of Letterhead:

• Professional Colleagues
• Professional Journals
• Scientific Associations/Societies
• Government Bodies
Miscellaneous Pointers:

- 7-10 Letters
- Issue of CV’s
Essential Key #5:

Making CV into an Advocacy Piece
PROFESSIONAL VS. IMMIGRATION CV:

What is the Purpose of a CV?
Drafting Tips:

- Introductory, Framing Description
- Defining Research Interests
- Stressing Metrics
- Contextualizing Scientific Work
- National Benefit
Essential Key #6:
Preeminence of Employing Institution
“Guilt by Association”
Factors Relevant to Institutional Stature:

- Ranking of Specific Program
- Overall Institutional Stature/Ranking
- Special Achievements
- Preeminent Faculty/Research Staff
- Level of Research Grant Funding
- Other Factors
Essential Key #7:

Important Role of Metrics
Why Metrics?

- Amorphous Terminology: Extraordinary Ability/National Interest
- Subjective Judgment
- Counterbalance to Complexity/Incomprehension
- Hard Data in a Soft World
What Metrics?

- Publications & Citations
- Funding Support
- Laboratory
- High Impact Factor of Journals
- Speculation on Commercial/Scientific Success
- Patents
- National Cost Savings
Essential Key #8:

Defining Professional Field
Legal Requirement:

- Risen to the Top of Professional Field
- Outstanding Abilities in the Profession
DEFINING THE PROFESSIONAL FIELD:

A Golden Opportunity to Establish Self-Preeminence
BASIC GOAL:

Limiting and Molding the Control Group
Essential Key #9:

National Importance of Field of Endeavor
ESSENTIAL QUESTION:

Why will the U.S. Benefit from Conferral of Permanent Residence?
How to Create the National Benefit Piece?
Essential Key #10:

Applicant has Burden of Proof
Who Has Responsibility to Do What?

- Applicant: Burden to Convince USCIS Examiner

- Important: The USCIS Examiner Does not have to Disprove Your Entitlement

Sports Analogy: Need of Applicant to Push Case Over the Goal Line
Do All Postdocs Qualify for Permanent Residence?
CONCLUSION

- Teamwork
- Advance planning
- Realistic assessments
- Good sense of humor
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