



# EB-Employment Based



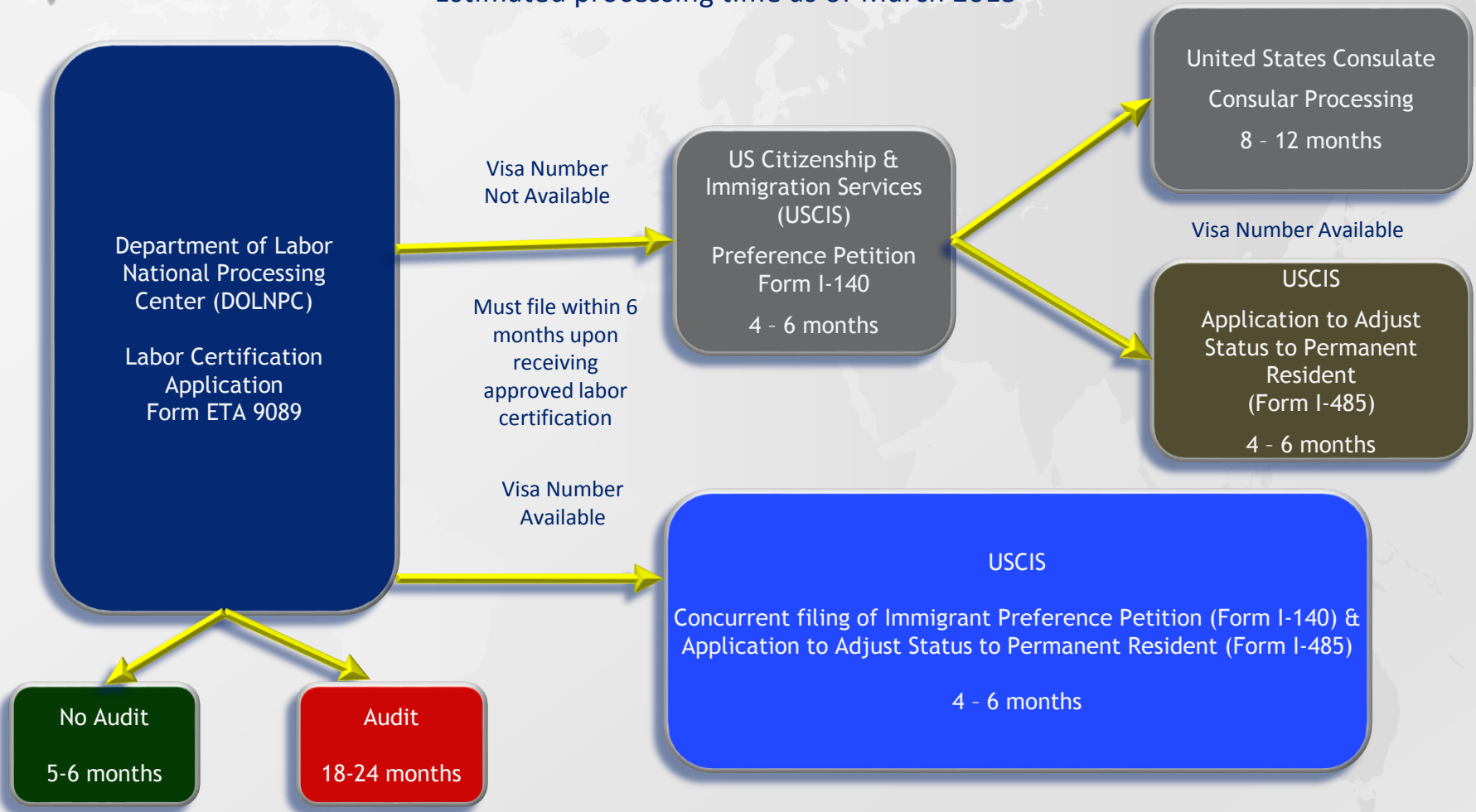
# EB CLASSIFICATIONS

- EB-1 – Extraordinary ability, Outstanding researcher or professor, multinational executive or manager
- EB-2 – Advanced degree or exceptional ability
- EB-3 – Professional, skilled worker and other worker
- EB-4 – Special immigrant
- EB-5 – Immigrant Investor



# EB PROCESS

Estimated processing time as of March 2015





# EB QUOTA

- Worldwide quota – 140,000 divided among 5 classifications: 40,000 for EB1, EB2, and EB3 each; 10,000 for EB4 and EB5 each
- Per country quota – 7.1% of each classification quota
  - applies when worldwide quota for a specific classification is to be reached
- Family members are counted currently
- Priority date – filing date of PERM or immigrant petition
  - when quota is exceeded for a classification by a country, individuals born in that country are put on a waiting list based on priority date
  - Cross chargeability





# VISA BULLETIN FOR MARCH 2015

<b>Employment- Based Preferences and quota (approximately)</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA - mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
140,000 total					
1st (40,000 plus unused from 4 <sup>th</sup> and 5 <sup>th</sup> preferences)	C	C	C	C	C
2 <sup>nd</sup> (40,000 plus unused from 1 <sup>st</sup> )	C	01SEP10	01JAN07	C	C
3 <sup>rd</sup> (40,000 plus unused from 1 <sup>st</sup> and 2 <sup>nd</sup> )	01JUN14	22OCT11	01JAN04	01JUN14	01JUN14
Other Workers	01JUN14	15AUG05	01JAN04	01JUN14	01JUN14
4 <sup>th</sup> (10,000)	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 <sup>th</sup> (10,000)	C	C	C	C	C



## EB2

- Determined by employer's minimum education and experience requirements
- Three ways to qualify for EB-2
  - Advanced degree with or without experience; or
  - Bachelor degree plus at least 5 years progressive experience; or
  - Bachelor degree plus 5 years progressive experience or equivalent advanced degree plus experience



# PREVAILING WAGE

- Based on education and experience requirements
- DOL 4-level OES Wage
- Alternative wage sources
- To be paid when receiving green card



# PERM PROCESS

- Prevailing wage determination by DOL (8 weeks)
- Recruitment
  - Two sources for non-professional positions
  - Five sources for professional positions
- Posting of Notice of Filing
- Filing deadline
  - 30 days after the later of the end of job order or posting of Notice of Filing
  - Must be filed within 180 days of the first recruitment activity
  - Must be filed before reaching 5<sup>th</sup> year in H-1B to ensure extension eligibility beyond 6-year cap



## ALTERNATIVES TO PERM

- EB-1.C Multinational Executive and Manager
- EB-1.A Persons of Extraordinary Ability
- EB-1.B Outstanding Professor & Researchers
- EB-2 National Interest Waiver
- Diversity Visa ("Lottery")
- Family-based Petitions



## EB-1.C MULTINATIONAL EXECUTIVE/MANAGER

- For multinational companies seeking to transfer certain employees to the US from abroad; your employees in L-1 status may qualify
- Companies must be related: Parent, Branch, Subsidiary, Affiliate



## EB-1.C MULTINATIONAL EXECUTIVE/MANAGER

- Employee must have worked with a related company abroad for at least 1 continuous year within the past 3 years in a position that is
  - Managerial: Manages the organization or a department, controlling the work of professionals or manages an essential function
  - Executive: Directs the organization or a major component with wide latitude in decision-making
- 1 in 3 years requirement can be met after 3 years if employee worked for company abroad at least one of last 3 years before entering in NIV status



## EB-1.C MULTINATIONAL EXECUTIVE/MANAGER

- If the visa numbers are current, simultaneous I-140 and I-485 filing would be possible.
- Whether to file I-140 and I-485 simultaneously is a question of strategy; if the EB-1 is not the strongest, filing sequentially might be recommended to avoid losing the I-485 government fees in case of a denial (particularly with several family members)
- Premium Processing is not possible





## EB-1.A PERSONS OF EXTRAORDINARY ABILITY

- Extraordinary ability in sciences, education, business or athletics
- Qualifies with major award (Nobel Prize)
  - Alternately a combination of USCIS criteria: national/international awards, published works, membership requiring outstanding achievement, commands high salary compared to others in field, & similar
  - Intended for small percentage at top of field



## EB-1.A PERSONS OF EXTRAORDINARY ABILITY

- If the visa numbers are current, simultaneous I-140 and I-485 filing would be possible.
- Whether to file I-140 and I-485 simultaneously is also a question of strategy.
- If person has Nobel Prize, probably appropriate; otherwise, due to high standards (approval rates of 59% and 62% for 2009 and 2010, last officially available), would recommend in-depth review of qualifications & recommendations on a case-by-case basis.
- Premium Processing is possible, which should make sequential filing less burdensome in terms of timing.



## EB-1.B OUTSTANDING PROFESSORS/RESEARCHERS

- Internationally recognized as outstanding in specific academic area with at least 3 years of experience in teaching or research in area, for specific teaching or research position
- Evidence includes at least 2 from list of criteria such as major awards, published material, original scientific research, etc.
- Same procedural comments as with EB-1 Persons of Extraordinary Ability, but high approval rates (less than 10% denial in 2009 and 2010, last officially available)



## EB-2 NIW

- Seeks employment in area of substantial intrinsic merit; Benefit will be national in scope; and National interest would be adversely affected if labor certification were required
- Must show benefit of unique skills substantially outweighs inherent interest in protecting US workers through labor certification process



## EB-2 NIW

- If the visa numbers are current, simultaneous I-140 and I-485 filing would be possible. Unlikely to be current for employees born in India and China.
- Whether to file I-140 and I-485 simultaneously is also a question of strategy, depending on strength of case and timing issues.
- Premium Processing not available at this stage.



## DIVERSITY VISA ("LOTTERY")

- 50,000 DVs available per year. Random computer selection. Must be born in countries whose natives qualify – list changes based on whether country had more than 50,000 natives immigrate in previous 5-years. Ex: natives of the following ineligible for DV-2016 (registration closed fall of 2014) - Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.
- No more than 7% of total DVs can go to natives of any one country



## DIVERSITY VISA ("LOTTERY")

- It is a US Department of State Application – no government fees for registration. Registration typically open for about one month each year
- Must meet education/work experience requirements:
  - (1) high school education or its equivalent, defined as successful completion of a 12-year course of formal elementary and secondary education;OR
  - (2) two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's O\*Net Online database will be used to determine qualifying work experience



## FAMILY-BASED PETITIONS (VERY BASIC OVERVIEW)

- Sponsorship through relative who is US citizen or LPR
- Relevant section relating to Family-sponsorship in Visa Bulletin
- Immediate Relative (USC Spouse most likely sponsor in your employees' case) – not subject to numerical limit, so that no wait time
- LPR Spouse: wait time varies. Priority Dates of May/June 2013 per March 2015 Visa Bulletin
- Simultaneous or Sequential Filing of I-130/I-485 depending on whether Immediate Relative & depending on visa numbers