

Lawful Permanent Residence Status (“Green Cards”) for Scientific Researchers

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It is no secret that obtaining Lawful Permanent Residence status, or a “green card,” in the United States is not simple. To the contrary, it is a complicated, lengthy, and expensive process fraught with traps for the unwary. Fortunately, however, U.S. immigration law makes the process a little easier for scientists.

Employment-based immigration is subject to a numerical limitation of approximately 140,000 immigrant visas per year. This is a low number relative to the demand. Accordingly, the law has established a “preference” system. The preference groups are based upon the nature of the employment in terms of educational level and ability required.

In order to qualify for this category, the applicant must first be able to demonstrate that the research position is permanent. A “permanent” position is one with an indefinite or unlimited duration with the expectation of continuity absent good cause for termination. The word “permanent” is a term of art and you should consult with an immigration law professional if you are not sure if your position is “permanent.”

The applicant must also be able to demonstrate that he or she is outstanding. Petitions in this category must be supported by evidence of international recognition, which shall consist of evidence in any two of the following six suggested groups:

- Documentation of the beneficiary’s receipt of major prizes or awards for outstanding achievement in the academic field
- Documentation of the beneficiary’s membership in associations in

the academic field, which require outstanding achievements of their members

- Published material in professional publications written by others about the beneficiary’s work in the academic field.
- Evidence of the beneficiary’s participation, either individually or on a panel, as judge of the work of others in the same or an allied academic field
- Evidence of the beneficiary’s original scientific or scholarly research contributions to the academic field
- Evidence of the beneficiary’s authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field

One should bear in mind that while most outstanding researchers work in the “hard” sciences, this is not a requirement. Outstanding researchers come from a number of scientific/academic fields. They may, for example, perform research in psychology or the social sciences. In addition, individuals who work in the Research & Development area of a private corporation may also qualify in the outstanding researcher classification and they may be able to obtain a pre-certified green card.

There are plenty of scientists who are well on their way to becoming outstanding within the meaning of the law, but are not quite there yet. Perhaps they have published one or two articles, and made a presentation at an international symposium, but have yet to acquire more evidence of being outstanding. In such a case, they might be eligible for a

National Interest Waiver (NIW). This option falls under the second employment-based preference group, which includes professionals with an advanced degree (a degree higher than a bachelor’s degree).

While the test for an NIW is not easy, it is one that many scientists conducting research have a reasonable chance of meeting. It requires that the research has “substantial intrinsic merit” and will have a benefit that is “national in scope,” and that the applicant has “some degree of influence on the field.” Scientists in the United States are currently engaging in all kinds of research that might fit the NIW bill—research into renewable energy sources, remote satellite sensing, and a cure for cancer are only a few. A relatively short, but important, list of articles and presentations in such a research area might establish “some degree of influence” in the field. Researchers who have begun to make a name for themselves should consider the NIW category as a possible path to permanent residence.

Last but not least, scientific researchers are sometimes eligible to apply for a green card as a person of exceptional (as opposed to outstanding) ability in the sciences under a provision known as “Schedule A, Group II.” The evidentiary requirements for this category are similar to the requirements listed above for the Outstanding Researcher category, but tend to be applied in a slightly less stringent manner.

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