How to define your "field of endeavor" for your EB-1A/NIW petition

By **Marco Pignone**

The goal is to define your field of research such that it maximizes the number of your research findings within that field and covers your most important/significant findings (most highly cited) throughout your entire career.

The previous three issues of *MRS Bulletin* featured a series of articles on the US Immigration process (see mrs.org/career_articles). I now focus on more narrow topics that provide a deeper understanding.

For an EB-1A I-140 petition to be granted, you are required to prove that you have risen to the "very top of your field of endeavor." For a National Interest Waiver (NIW) I-140 petition, you must be "well positioned to advance the proposed endeavor." Prior to a 2016 court case, Matter of Dhanasar, a NIW petitioner was required to prove a "degree of influence on the field as a whole," above and beyond the substantial majority of other researchers. While the word "field" is no longer used in relation to NIW petitions, you are still required to define your field of research. The law does not explain how to classify this or how large or small a "field" must be to qualify for approval in the EB-1A or NIW categories. Therefore, it is extremely important to carefully define your field of endeavor. Many EB-1A and NIW petitioners (and often lawyers) doom their cases by exercising poor judgment in defining the field or in simply failing to understand this issue at all. To understand what you are trying to accomplish, it is important to clearly define the goal.

The general rule

The simple answer to the question, "How should I define my field?" is "narrowly." If you describe your field as chemistry, biology, or materials research, then you will be compared to every researcher in the entire field, not only researchers at your career stage. You want the US Immigration Service to view you as being important and unique.

This is especially important advice in the EB-1A category, where you must prove that you are one of the few researchers at the "very top" of your field, but it is also important in relation to NIW cases, where you must be "well positioned to advance" your field. As an example, if you define your field as "cell biology," you may not be at the "very top" of your field, but if you define it as "cell energy/cell metabolism," a subfield of biology, you would have a better chance of winning your case.

What the law/government manual states about this subject

The law defines "academic field" as "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education," which may limit how you define your "field of endeavor." The *Adjudicator's Field Manual*, which is used by Immigration Service officers in training, states that the field must be "larger than a very small area of specialization in which only a single course is taught or the subject of a very specialized dissertation."

If your field is defined so narrowly that Immigration Services decides that only a very small number of researchers are in this "field" or that only members of your laboratory are researchers in the field you defined, then they could deny your case. Simply put, do not overstate your importance.

The exceptions to the general rule

Following general rules can produce good results in most cases, but when additional analysis is required because you encounter an exception to the rule, you could experience difficulty.

Many researchers have accomplishments in two or more subfields. For example, you may have numerous published journal articles in two different subfields of "cell biology." If you do not have a sufficient number of

citations to your articles in one of the subfields, then you should consider defining your field more broadly, such that all of your research accomplishments will be considered in support of your immigration petition.

The field should also include your new job, if applicable. Immigration Services may deny your petition if you do not prove that you intend to work in your defined field. If you are currently working in your field, this is not an issue, but an issue could arise if you move from the laboratory to the business side of your scientific field.

The definition of your field is a critical component of a successful I-140 immigration petition, and a good immigration lawyer should have a complete understanding of your research findings as well as your current job and any job that you may consider taking at any time prior to receiving your green card.

Marco Pignone, immigration lawyer at the Philadelphia law firm Getson & Schatz, P.C. (https://researchergreencard.com/), currently focuses on EB-1A and NIW petitions for immigrant researchers. Since 2001, he has represented immigrants in a wide range of immigration matters.