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LAW OFFICES OF ISMAIL T. SHAHTAKHTINSKI

WHITEPAPER

THE BACKLOG ESCAPE

Why EB-1A Is the Fastest Realistic Green Card Path for Extraordinary Talent Worldwide – From India and China to the Middle East and the Gulf



“Your achievements are the visa.”

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Executive Summary

The employment-based green card backlog is not one problem. It's two, and they look almost nothing alike depending on where someone was born. For Indian and Chinese nationals - who collectively represent the largest share of employment-based green card applicants in the United States - the backlog is a generational problem. Under the U.S. Department of State's August 2026 Visa Bulletin, the EB-2 category (advanced degree professionals and PERM-sponsored employment) is unavailable to Indian nationals for the remainder of the fiscal year, and the EB-1 category for India carries a Final Action Date of October 15, 2022, with the State Department cautioning that it too may become temporarily unavailable before the fiscal year closes.

For most of the rest of the world - including, with some real and worth-naming exceptions, most of the Middle East and virtually all of the Gulf Cooperation Council states - the backlog looks completely different, because for the most part there currently isn't one. EB-1, and in most recent months EB-2 as well, has been running current for the "All Chargeability Areas Except Those Listed" column that covers the vast majority of the world's countries, meaning the constraint for a professional born in, say, Saudi Arabia, the UAE, Qatar, or Bahrain generally isn't the visa queue at all. It's whether their record supports the petition in the first place.

Both of these are stories worth telling accurately, and this whitepaper tells both. These are not abstractions. They describe real people - researchers, engineers, physicians, executives, chefs, designers, coaches, and performers - who have built careers in the United States or are building toward one, and who are watching a calendar that treats them very differently depending on a country of birth they didn't choose.

This whitepaper has one purpose: to make the case, plainly and without exaggeration, for why the EB-1A Extraordinary Ability green card deserves serious consideration from anyone, anywhere in the world, who has genuinely risen to the top of their field - whatever that field happens to be. That last phrase matters, and it is the premise this whitepaper is built around. EB-1A eligibility is not confined to laboratory scientists and university researchers. The underlying federal regulation, 8 C.F.R. § 204.5(h), defines extraordinary ability as sustained national or international acclaim in the sciences, arts, education, business, or athletics, and its evidentiary criteria explicitly reference “scientific, scholarly, artistic, athletic, or business-related contributions of major significance.” A chef with sustained press recognition and a signature culinary contribution, a founder whose company has been profiled in major trade press, a coach whose athletes have won at the national level, a curriculum designer whose methodology has been adopted by other institutions, and a musician whose work has achieved measurable commercial success are, in the eyes of the regulation, evaluated by the same extraordinary ability standard as a biomedical researcher with a strong citation record. The evidence looks different by field. The legal standard does not.

We want to be direct about what this whitepaper is not. It is not a promise. USCIS decides every case on the specific record presented, and no law firm - including ours - can guarantee an outcome, a timeline, or a specific approval probability before reviewing an individual’s actual evidence. What we can offer is an accurate picture of the backlog mathematics, an accurate picture of who the regulation actually reaches, and a framework for deciding whether a self-petition conversation is worth having. The rest depends on the individual record, and every record is different.

1 SECTION

The Country-of-Birth Backlog – The Scale of the Problem

1.1 How the Backlog Works

The U.S. employment-based immigration system allocates roughly 140,000 green cards annually across five preference categories, and no single country of birth may receive more than 7 percent of that total in a given fiscal year. For countries that produce very large numbers of employment-based petitioners - India and China above all - that per-country ceiling creates a structural overflow that has compounded for more than a decade. The visa is authorized; the specific person born in India or China simply has to wait in a line that is far longer than the line facing almost everyone else in the world.

The table below reflects the U.S. Department of State's Visa Bulletin for August 2026, the most recent bulletin available at the time of writing. Visa Bulletin dates move monthly, and categories can retrogress - move backward - or become entirely unavailable for the remainder of a fiscal year if demand outpaces the annual allocation, which is exactly what has happened to EB-2 India this year. We recommend checking the current bulletin directly before relying on any specific date for planning purposes.

Category	India Final Action Date (Aug. 2026)	China Final Action Date (Aug. 2026)	Relative Backlog Status
EB-1 (Extraordinary Ability/ Outstanding Researchers/ Multinational Executives)	October 15, 2022	July 1, 2023	Far shorter than EB-2/EB-3 for India - but not backlog-free, and the State Department has warned EB-1 India may become temporarily unavailable before the fiscal year ends
EB-2 (Advanced Degree/ Exceptional Ability/ NIW)	Unavailable for the remainder of FY2026	September 1, 2021	No new visa numbers being issued to India-born EB-2 applicants until the new fiscal year opens in October 2026
EB-3 (Skilled Workers/ Professionals)	Retrogressing; behind EB-2 historically	January 1, 2024 (approx.)	Decades-long practical wait for India under current trends

Note: Visa Bulletin dates change monthly and the categories above can move in either direction. We verify the current Final Action Dates against the Department of State's published bulletin before advising any client on a specific timeline, and we encourage every reader to do the same rather than rely on figures in any static document, including this one.

1.2 The Human Consequence of the Backlog

An EB-2 final action date of “unavailable” is not a technicality - it means that for the balance of this fiscal year, no India-born EB-2 applicant, however complete their paperwork, will receive a green card number. For EB-3, the practical wait for India-born applicants has run into decades under recent Visa Bulletin trends. These are professionals - and not only STEM professionals - who have built careers, purchased homes, enrolled children in American schools, and in many cases spent close to their entire working lives in the United States on temporary status that depends on continued employer sponsorship. They generally cannot accept promotions that materially change job duties without their employer first amending the underlying H-1B petition - a requirement that applies to material changes, not routine raises or title updates. AC21 portability and adjustment portability can ease some of this friction in specific circumstances - for example, once an I-485 has been pending 180 days, or when changing to a same-or-similar role at a new employer - but neither eliminates the underlying dependency on employer sponsorship. They still face real friction changing employers, particularly earlier in the process. Their children can lose derivative status and be forced to “age out” at 21 if the green card has not been finalized by then.
EB-1, by contrast, is materially less backlogged than EB-2 or EB-3 for both India and China - though it is not immune to its own pressure, and it is not close to current either. As the table above shows, EB-1 India's Final Action Date sits at October 15, 2022 and EB-1 China's at July 1, 2023 - roughly four and three years behind the publication date of this whitepaper, respectively - and the State Department has flagged EB-1 India for possible temporary unavailability later this fiscal year. That caveat matters, and this whitepaper will not pretend otherwise. But even with that caveat, an Indian or Chinese national who qualifies for EB-1A today is, under current Visa Bulletin trends, generally looking at a materially shorter wait than the same person would face filing EB-2 or EB-3 - not because EB-1A is backlog-free, but because dramatically fewer people qualify for it, so the per-country ceiling stretches further.

For Indian nationals in particular, EB-2 is not currently issuing new numbers at all. Every qualifying professional - not just those with research records - should understand whether the extraordinary ability standard applies to them before assuming the standard employer-sponsored path is the only option.

1.3 Beyond India and China: A Global Talent Standard, With a Closer Look at the Middle East and the Gulf

The per-country backlog described above is specific to a small number of countries - overwhelmingly India, and to a lesser extent China - because those are the countries whose demand for employment-based green cards regularly exceeds the 7 percent per-country ceiling. For the remainder of the world, employment-based immigrant visa numbers are generally allocated under the "All Chargeability Areas Except Those Listed" column of the Visa Bulletin, which covers nearly every other country of birth, including all of the Gulf Cooperation Council states and most of the Middle East and North Africa. Through most of 2025 and into 2026, that column has run current or close to current for EB-1, and for much of that period for EB-2 as well, meaning that for a qualifying professional born in that column's countries, an approved I-140 petition can frequently be followed by an adjustment of status filing without any priority-date wait at all. That is a materially different, and materially faster, starting position than the one facing India- or China-born applicants in the same category.

We want to be precise about what this does and doesn't mean, because "current" is a monthly designation, not a permanent guarantee. The Rest-of-World EB-2 column briefly retrogressed in parts of 2025 under high demand before returning to current in 2026, and the State Department has been explicit that further movement in either direction is possible before any fiscal year closes. A current Visa Bulletin column also does not mean a petition is automatically approved - it only removes the queue as the limiting factor, leaving USCIS's evaluation of the underlying record as the actual determinant.

For a professional born outside India and China, the practical implication is this: the EB-1A conversation isn't primarily about escaping a backlog, because in most months there generally isn't one to escape. It's about whether self-petition - skipping employer sponsorship, PERM labor certification, and, for anyone still on H-1B-track status, the cap lottery entirely - is worth pursuing simply because it's faster and less dependent on an employer, for a record that already supports it.

Gulf and Middle East professionals specifically.

For nationals of Saudi Arabia, the United Arab Emirates, Qatar, Bahrain, and Oman, that “Rest of World” current status applies without qualification under the Visa Bulletin’s country-of-chargeability rules as of this writing. Readers from other countries in the region should confirm their specific country's current status directly with counsel, since country-of-chargeability treatment can vary and is worth verifying case by case rather than assumed from a general document.

Region	Current Backlog Picture (Aug. 2026)	What This Means Practically
GCC (Saudi Arabia, UAE, Qatar, Bahrain, Oman)	EB-1 and, in most recent months, EB-2 running current under “Rest of World”	Self-petition is primarily a speed and independence play, not a backlog escape - both consular processing and domestic adjustment of status are currently available
Kuwait	Same Visa Bulletin position as the rest of the GCC, but nationals are currently subject to the January 2026 consular immigrant-visa pause	Domestic adjustment of status (for those already in the U.S.) is unaffected by the pause; consular immigrant visa issuance abroad is currently paused and its status is being litigated
Egypt, Jordan, Lebanon, Morocco, Algeria, Tunisia, Iraq, Syria, Yemen, Iran, Libya India, China	Same “Rest of World” Visa Bulletin position, but nationals are currently subject to the January 2026 consular pause Materially longer, country-specific backlogs described in Sections 1.1-1.2	Same as above - the constraint for anyone currently outside the U.S. is largely the pause and its litigation status, not the underlying Visa Bulletin queue EB-1A self-petition is a genuine backlog-shortening strategy, not only a speed and independence play

2 SECTION

Who Actually Qualifies for EB-1A – Beyond the Laboratory

2.1 The Misperception That Costs the Most People Their Case

The single biggest reason qualified professionals – from India and China, from the Gulf, from across the Middle East, and from everywhere else – never explore EB-1A is a misunderstanding of what "extraordinary ability" means – and this misunderstanding is not limited to STEM. Many attorneys and most prospective petitioners assume the category exists for Nobel laureates, Olympic medalists, or entertainers who need no introduction. It does not. USCIS regulations define extraordinary ability as a level of expertise placing someone "among the small percentage who have risen to the very top" of their field. A small percentage of a large field is still a meaningful number of people – and "field" is defined broadly enough to include not only scientific research, but business leadership, education, athletics, and the arts, each with its own evidentiary path under the regulation.

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) are written in field-neutral language for exactly this reason. Several criteria – awards, membership in selective associations, published material about the petitioner, judging the work of others, a leading or critical role at a distinguished organization, and high remuneration relative to peers – apply identically whether the petitioner is a research scientist, a restaurant chef, a private equity executive, or a national-level coach. Two criteria are written specifically for the arts: display of work at artistic exhibitions or showcases, and commercial success in the performing arts (documented through box office receipts, recording sales, or comparable measures). And the "original contributions of major significance" criterion explicitly covers "scientific, scholarly, artistic, athletic, or business-related contributions" – not research contributions alone.

2.2 Illustrative Profile Patterns by Field

The table below is illustrative, not exhaustive, and it is not a guarantee that any specific profile will qualify. USCIS evaluates every petition on its own record, both criterion by criterion and, ultimately, on the "final merits" question of whether the totality of the evidence places the person among the small percentage at the top of the field. What the table is meant to do is correct a specific, common error: assuming that a strong professional record in a non-research field has nothing to offer an extraordinary ability petition.

Field	Illustrative Evidence That May Be Relevant	Regulatory Criteria Commonly Implicated
Sciences / Engineering / Technology	Peer-reviewed publications, citation record, patents, competitive federal or foundation grants, technical standards contributions, peer review service	Scholarly articles, original contributions, judging, membership, high salary
Business / Entrepreneurship / Finance	Founding or senior leadership role at a company of recognized standing, trade press coverage, industry awards, compensation benchmarked against peers, board or advisory appointments	Leading or critical role, published material, awards, high salary, original contributions
Arts (visual, culinary, design, performing)	Gallery or museum exhibitions, juried showcases, major media coverage of the petitioner's work specifically, documented commercial success (sales, box office, streaming, or comparable data), industry awards	Artistic exhibitions, published material, commercial success in the performing arts, awards
Athletics (athletes, coaches, sports scientists)	National or international-level competition results, rankings, coaching records at a recognized level, sports science research, media coverage, salary or compensation data	Original contributions, awards, published material, leading or critical role, high salary
Education	Institutional leadership, curriculum or methodology adopted beyond the petitioner's own institution, competitive research or program grants, professional recognition from educational associations	Membership, leading or critical role, original contributions, awards
Medicine / Clinical Practice	Board certification and subspecialty training, clinical leadership roles, research contributions, professional society leadership, Conrad 30 or similar program participation for physicians	Leading or critical role, judging, original contributions, membership

2.3 No Assumption Is Made Without Evidence

I.S. Law Firm does not estimate eligibility from a job title or a field description alone, and this whitepaper does not either. Every self-petition engagement begins with a structured eligibility assessment that maps the individual's specific record - whatever the field - against the ten EB-1A criteria and produces a concrete finding: which criteria the existing record currently supports, which would require additional evidence development, and what a realistic evidentiary path looks like. We do not promise a specific approval probability in the abstract, because approval probability is not an abstract question. It depends entirely on the documentation a specific person can produce.

SECTION 3

EB-1A vs. NIW vs. O-1 – The Backlog Decision Matrix

3.1 Why the National Interest Waiver Is Not Always the Right First Move

The EB-2 National Interest Waiver ("NIW") is often discussed alongside EB-1A because both allow self-petition without employer sponsorship or PERM labor certification. But NIW sits in the EB-2 category, and EB-2 India is currently unavailable for the rest of this fiscal year - meaning an approved NIW petition for an India-born professional does not currently translate into a green card number, even after approval. For some petitioners, particularly those still building toward the EB-1A evidentiary threshold, filing NIW now can still make sense as a priority-date-locking strategy: an approved I-140 freezes a priority date that can potentially later be carried forward if the petitioner's profile strengthens into EB-1A eligibility. But it is not, this year, a faster route to an actual green card for India-born applicants than EB-1A, given EB-2 India's current unavailability.

3.1 Why the National Interest Waiver Is Not Always the Right First Move

It is also worth noting plainly that NIW eligibility itself requires qualifying first for the EB-2 underlying category - as an advanced degree professional or as someone of exceptional ability in the sciences, arts, or business - and then satisfying the three-prong Matter of Dhanasar national interest test. NIW has historically been used predominantly by STEM researchers and physicians, and the "national importance" prong is often more straightforward to argue for federally-funded research areas. That does not mean it is closed to business or arts professionals with exceptional-ability-level records, but the national interest argument typically needs to be built more deliberately outside a research context. USCIS's own recent adjudication data underscores why the evidentiary architecture matters regardless of pathway. According to USCIS Form I-140 adjudication statistics, the national EB-2 NIW approval rate fell from roughly 80 percent in Fiscal Year 2023 to approximately 43 percent in Fiscal Year 2024, before partially recovering into the mid-to-high 40s and low 50s through 2025 and into early 2026, with a low point of roughly 36 percent in the fourth quarter of Fiscal Year 2025. EB-1A approval rates have followed a similar, somewhat less severe pattern - roughly 70 percent in FY2023, dropping to roughly 60 percent in FY2024, and fluctuating in the high 60s to mid 70s through 2025. These are not numbers to be alarmed by in isolation; they reflect a genuinely more demanding adjudicative environment across both categories, and they are also not a prediction for any individual case. They are a reason to take petition preparation seriously rather than treating either category as a formality.

3.2 The Priority Date Strategy Decision

Scenario	Strategy Worth Discussing	Rationale
Strong EB-1A profile now, any field	File EB-1A directly	EB-1 remains close to current for India and China; no PERM or employer sponsorship required
Profile may reach EB-1A standard in 2-3 years	Evaluate NIW now to lock in a priority date, revisit EB-1A as the record develops	An approved I-140 priority date can potentially be carried forward into a later EB-1A filing
Non-STEM profile with strong business, arts, or athletic record	EB-1A evaluation first; NIW only if the individual also has an advanced degree or documented exceptional ability basis for EB-2	NIW's Dhanasar framework is harder to build outside a research or clearly documented national-importance context
O-1A or O-1B eligible now; green card strategy still developing	File O-1 (O-1A for sciences/education/ business/athletics, O-1B for the arts) as a status bridge while building the EB-1A record	Provides authorized status without requiring the green card case to be finished first; results are not guaranteed and depend on the individual record

SECTION 4

The Filing Decision Timeline

4.1 Why Waiting Is Rarely Free

The most common strategic error we see - across every field, and across every country of birth - is delay grounded in the belief that "I'll file once my record is stronger." That belief is not unreasonable; a thin petition filed too early can produce a Request for Evidence or a denial that is more costly to unwind than simply waiting and building the record properly first. But delay has its own cost, and it takes a different shape depending on where someone was born. For India-born professionals, every year spent on EB-2 or EB-3 sponsorship is a year inside a queue where the category is, at this writing, not issuing numbers at all. For professionals born in the Gulf states or elsewhere in a currently-current Visa Bulletin column, the cost of delay is less about a queue and more about the years spent on H-1B sponsorship, PERM, and employer dependency that a qualifying EB-1A case could have bypassed entirely. For professionals from a country currently affected by the January 2026 consular pause, the practical calculus is different again, and worth a direct conversation given how unsettled that policy's status currently is. For a business executive, an artist, an educator, or an athlete anywhere in the world who already has a defensible record under two or three of the ten EB-1A criteria, deferring an honest evaluation of that record is not caution. It is an unexamined assumption that the extraordinary ability standard does not apply to them - an assumption this whitepaper is specifically written to test.

The right time to have this evaluated is not when the record is perfect.

It is when there is enough of a record to have an honest, evidence-based conversation about it.

Sources and Research Citations

Source	Publication / Report
U.S. Department of State	August 2026 Visa Bulletin, Employment-Based Final Action Dates, including the “All Chargeability Areas Except Those Listed” column covering the GCC, most of MENA, and the rest of the world
U.S. Department of State	Announcement of Indefinite Pause on Immigrant Visa Issuance for Nationals of 75 Countries, effective January 21, 2026
CLINIC v. Rubio, No. 1:26-cv-00858 (S.D.N.Y., filed Feb. 2, 2026)	Ongoing litigation challenging the January 2026 consular immigrant-visa pause
8 C.F.R. § 204.5(h)	EB-1A Extraordinary Ability Regulatory Criteria (ten criteria, including artistic exhibition and performing-arts commercial success categories)
Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016)	EB-2 National Interest Waiver Three-Prong Framework
USCIS	Form I-140 Adjudication Statistics, FY2023-FY2026 (EB-1A and EB-2 NIW approval-rate trends) EB-1A and EB-2 Adjudication Standards
U.S. Citizenship and Immigration Services Policy Manual, Vol. 6, Part F	Backlog Escape Strategy Framework; Multi-Field, Multi-Region EB-1A Eligibility Analysis, 2026

Immigration figures and Visa Bulletin dates change frequently. This whitepaper reflects publicly available data as of its publication date and should be read alongside the current Visa Bulletin and current USCIS guidance.

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