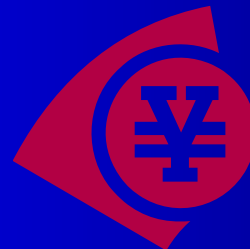
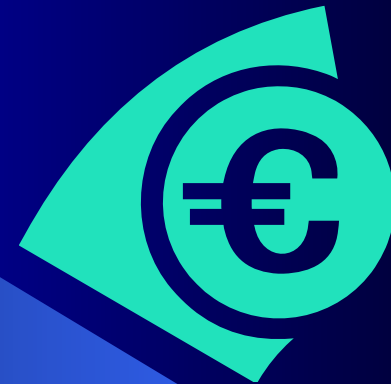


# Employment Based Immigration



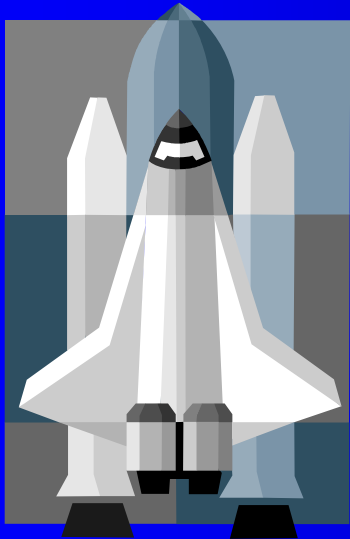
# Immigration Act of 1990

“Give me your skilled, your rich...”

# EB Preferences – Overview

- **First:** Priority Workers - 28.6%
- **Second:** Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability - 28.6%
- **Third:** Skilled Workers, Professionals, and Other Workers - 28.6%
- **Fourth:** Special Immigrants - 7.1%
- **Fifth:** Employment Creation - 7.1%

# EB-1 ♦ PRIORITY WORKERS



- Extraordinary ability
  - Self-petition
- Outstanding profs & researchers
- Multinational execs
- No labor cert required

## EB-2 ♦ MEMBERS OF PROFESSION OR ALIENS EXCEPTIONAL ABILITY

- Members of “profession” holding “advanced degrees”
- “Exceptional ability” in the sciences, arts, or business
- Labor cert requirement
- National Interest Waiver (NIW)

## EB-3 ♦ SKILLED WORKERS, PROFESSIONAL, OTHER WORKERS

- Skilled workers (2 yrs experience)
- Professionals (baccalaureate)
- Other workers (less than 2 yrs)
  - (10,000 max)

# EB-4 SPECIAL IMMIGRANTS

- 10,000
- Not more than 5,000 to religious workers

# EB-5 EMPLOYMENT CREATION

- Investors
  - \$1,000,000 + 10 jobs for USC
  - \$500,000 Target Employment Areas (3000)
  - Regional Centers – relaxed job creation
- Max 10,000

# Permanent Labor Certification



# Qualifying Criteria

- Applications filed on or after March 28, 2005, must file using the new PERM process and adhere to the new PERM Regulations
- The employer must hire the foreign worker as a full-time employee
- There must be a bona fide job opening available to U.S. workers
- The employer must pay at least the prevailing wage for the occupation in the area of intended employment

# Qualifying Criteria – Job Requirements

- Adhere to what is customarily required for the occupation in the U.S. and
- May not be tailored to the worker's qualifications
- Employer must document that the job opportunity has been and is being described without unduly restrictive job requirements, unless adequately documented as arising from business necessity

# Process for Filing

- Application ([ETA Form 9089](#))
- Signature requirement
- Prevailing wage (Prior to filing)
- Pre-Filing Recruitment Steps
- Audits/requests for information
- Retention of records (5 years)
- Filing
- Approvals
- USCIS – I-140 Petition

# Schedule A Occupations

- List set forth at [20 CFR 656.15](#)
- Physical Therapists
- Professional Nurses
- Aliens of exceptional ability in the sciences or arts including college and university teachers of exceptional (except for aliens in the performing arts)
- Performing arts - Aliens of exceptional ability in the performing arts

It is important to note that O\*NET analysts assigned OUs to Job Zones not by mathematical rounding (for example, assigning OUs with a mean SVP below 7.5 to Job Zone 4 while assigning OUs with a mean SVP of 7.5 and above to Job Zone 5). Instead, they simply eliminated the fractional amount, no matter how close to the next-higher Job Zone the mean SVP was. Put another way, Job Zone 4 is defined as "a mean SVP of greater than or equal to 7.0, but less than 8.0." Therefore, even OUs with higher-level, mean SVP fractions (*e.g.*, Chefs and Head Cooks at 7.50 and Mechanical Engineers at 7.50) were classified within Job Zone 4 because they literally had an SVP rating of less than 8, even though many or most of the DOT entries that make up that OU have an SVP rating of 8 or

# Vocabulary

- SWA – State Work Agency
- SVP – Specific Vocational Preparation for the job
- DOT – 11,000 job titles (old system)
- O\*NET – Occupational Information Network – 1,122 occupational units (OU)
- OU = 5 “Job Zones”
- SOC – Standard Occupational Classification System
- PERM – Program Electronic Review

Management

# CASES

- Matter of Information Industries
  - Defining the job
- Matter of Muni
  - Extraordinary ability