

PROFESSOR YES—IMMIGRATION OPTIONS FOR PROFESSORS AND RESEARCHERS

*by Scott M. Borene**

This article provides some analytical tools to help academics and researchers, their college and university employers and their immigration counsel to comply with U.S. immigration rules and to successfully obtain approvals of work visas and green cards. The tools include four appended checklists and an Immigration Intake Worksheet that may be useful in planning immigration projects for professors and researchers:

- **Checklist of Some Temporary Immigration Options for Professors and Researchers** (Appendix A);
- **Checklist of Some Permanent Immigration Options for Professors and Researchers** (Appendix B);
- **Checklist of Key Questions for Professors and Researchers Seeking Employment Authorization** (Appendix C);
- **Comparative Checklist of 10 Common Characteristics of Positive Reference Letters (Stronger Evidence) and 10 Common Characteristics of Neutral/Negative Reference Letters (Weaker Evidence)** (Appendix D); and
- ***Quick Screen Immigration Intake Worksheet*** (Appendix E)

Overall, this article assumes that the reader has a general familiarity with U.S. immigration law and a particular familiarity with the current temporary and permanent employment-based visa categories, the Program Electronic Review Management (PERM) labor certification process, and the special rules applicable to professors and researchers, including their often difficult problems with Immigration and Nationality Act (INA) §212(e) requirements.

The first section of this article, **Some Critical Immigration Issues for Professors and Researchers**, discusses key issues involved in the immigration sponsorship of academics and researchers. It is intended as a starting point for the analysis of U.S. immigration options for academics and researchers. Next, some potential pitfalls are described in the section titled **Traps for the Unwary**. The article concludes with a section of **Practical Tips**.

Appendix A, “Checklist of Some Temporary Immigration Options for Professors and Researchers” provides an inventory of some possible temporary work visa options.

Appendix B, “Checklist of Some Permanent Immigration Options for Professors and Researchers” provides an inventory of some possible permanent options.

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Appendix C, “Checklist of Key Questions for Professors and Researchers Seeking Employment Authorization” is a beneficiary questionnaire that identifies facts and evidence that can help or hinder a professor’s or researcher’s case. Every question is related to one or more factors affecting a professor’s or researcher’s immigration options.

Immigration lawyers who are very experienced in managing academic and researcher immigration matters can use the checklist in Appendix C as an issue identification screening tool. For those with less experience, the questions will help show the way to relevant fact gathering and provide a sample of the range of facts and factors that can affect a professor’s or researcher’s immigration case.

Appendix D, Comparative Checklist of 10 Common Characteristics of Positive Reference Letters (Stronger Evidence) and 10 Common Characteristics of Neutral/Negative Reference Letters (Weaker Evidence) provides a guide to evaluating the quality and utility of key reference letters, which are especially important in O-1 and Priority Worker cases.

Appendix E, *Quick Screen* Immigration Intake Worksheet can be used as an initial immigration issue-spotter during a first interview with a beneficiary/prospective client.

SOME CRITICAL IMMIGRATION ISSUES FOR PROFESSORS AND RESEARCHERS

The J-1 §212(e) Two-Year Home Country Residence Requirement

Few problems are as vexing to immigration lawyers and their clients as the J-1 §212(e) two-year home country residence rule.¹ Many professors and researchers are subject to this requirement. This is especially true of physician–scientists employed as clinical doctors or medical researchers at America’s major academic medical centers such as Johns Hopkins, Harvard, Mayo Clinic and similar institutions.

The INA §212(e) requirement typically becomes legally binding on the J-1 exchange visitor at the moment of entry into the United States in the J-1 category. Not all J-1’s are “subject to” the two-year home country residence requirement. Unfortunately, misclassifications both ways are not uncommon (*i.e.*, some J-1’s who “are subject” mistakenly believe they are not, and vice versa). Therefore, the first task in advising anyone who has ever been present in the United States as a J-1 or J-2 is to carefully evaluate whether they are subject to §212(e) or not.

Upon becoming “subject to §212(e)”, the professor or researcher is subject to five continuing immigration restrictions: (1) No H-1B *visa*; (2) No L-1 *visa*; (3) No K-1 *visa*; (4) No change of status in the United States directly from J-1 or J-2 to any nonimmigrant status; and (5) no lawful permanent residence (*i.e.*, no “green card”).² These restrictions generally continue indefinitely (*i.e.*, for the rest of the professor’s or researcher’s life), until the individual either satisfies the two-year home country requirement by residing in their country of last residence (usually home country) for two years or obtains a waiver of the two-year home country residence requirement.

This INA §212(e) problem is one for which an ounce of prevention is worth many pounds of cure. Because of the frequent difficulty, delay and uncertainty involved in obtaining §212(e) waivers for professors, researchers and doctors and the career-disrupting effects of living outside the United States for a minimum of two years, unquestionably the best way to deal with §212(e) is to avoid becoming subject to it in the first place. Unfortunately, immigration attorneys rarely have the opportunity to counsel prospective J-1 professors, researchers and doctors before they accept J-1 sponsorship and entangle themselves in §212(e) chains.

Nevertheless, if a professor, researcher or doctor has not yet become subject to §212(e), the strongest possible consideration should be given to non-J-1 alternative non-immigrant categories that provide appropriate employment authorization that will enable the professor, researcher, or doctor to perform their desired job,

¹ INA §212(e), 8 USC §1182(e).

² *Ibid.*

including the following: H-1B, H1B1, E-3, O-1, TN, Asylee or other nonimmigrant statuses.³ If a “fast track” Lawful Permanent Residence option is available, that may also be considered as a non-J-1 alternative Employment Authorization option. Please see Appendices A and B for a more comprehensive list of nonimmigrant and immigrant alternatives to J-1 sponsorship.

J-1 Waivers

So, the bad news is that many professors and researchers are subject to the INA §212(e) requirement. The good news is that in many cases the INA §212(e) problem can be cured by a successful J-1 waiver strategy or, alternatively, made less disruptive by use of a temporary employment authorization method such as an O-1 visa that does not require a waiver of §212(e).

Many professors and researchers seek waivers of the J-1 two-year home country residence requirement in order to become eligible for H-1 status or permanent residence. Obtaining timely approval of an INA §212(e) waiver often presents one of the most difficult challenges in handling professor and researcher immigration matters. A comprehensive discussion of waiver strategies and procedures is beyond the scope of this paper. Some additional resources for solving §212(e) problems are noted below.⁴ For planning purposes, it is essential to determine at the outset whether or not the individual may have a §212(e) issue and to analyze all of the available options to manage this issue. The author has never seen a J-1 two-year home country residence case that does not have multiple possible short-term and long-term solutions to coping with §212(e) issues. In almost every case, an immigration lawyer who is very experienced in managing §212(e) issues can identify several options that could permit work authorization while a waiver is pending. Some waiver strategies can require several years to execute completely, during which time the individual’s immigration status in an O-1 or other temporary employment authorized status must be carefully monitored and managed.

The Need for a Permanent Job Offer in the Outstanding Professor or Researcher Category

The issue of the “permanent” job offer required by the Outstanding Professor and Researcher category has historically been a tender subject at all of the USCIS Service Centers. Do not assume that the mere willingness of a university employer to sign an I-140 petition resolves the issue. A common cause of requests for evidence (RFE) and denials in Outstanding Professor or Researcher cases is inadequate evidence of the “permanence” of the position offered. This is often an especially challenging issue for grant-funded researcher positions because of the short duration and the uncertainty of funding renewal. Remember that the university petitioner must provide appropriate evidence that the position is tenured, tenure-track, or for a term of indefinite or unlimited duration.

Reference Letters in Support of Extraordinary Ability, National Interest Waiver, Outstanding Professor or Researcher and O-1 Petitions

The testimony of expert witnesses, typically in the form of detailed reference letters about the beneficiary and their work and accomplishments in the field, can be critical evidence in professor and researcher immigration casework. Indeed, the approval or denial of many Form I-140 petitions for Outstanding Professor or Researcher, Extraordinary Ability and National Interest Waiver cases may turn on the quality of reference letter evidence.

Unfortunately, there is no definitive government guidance describing exactly what constitutes strong evidence in the form of a Priority Worker reference letter. Nevertheless, based on agency guidance, Administrative

³ Note: 8 C.F.R. §274a.12 (a) contains a listing of many additional employment authorization options.

⁴ For further discussion of strategies for coping with difficult §212(e) problems, see the following articles: “Demythicalizing the Exchange Visitor Two-Year Return Requirement” by H. Ronald Klasko, 8 *Bender’s Immigr. Bull.* 578 (April 1, 2003), “The Odyssey of the J-2: Forty-Three Years of Trying Not to Go Home Again” by Naomi Schorr and Stephen Yale-Loehr, 18 *Geo. Immigr. L.J.* 221 (Winter, 2004), “Exchange Visitors and the Return Requirement: Myths and Realities,” by H. Ronald Klasko and “Understanding the Two-Year Home Residence Requirement and Waivers” by Bill Stock, included in AILA’s *Immigrations Options for Academics and Researchers* (2005), as well as “Every Agency Can Be An ‘Interested Government Agency’ - Developing 212(e) Waiver Options for Foreign Physicians,” by Scott M. Borene, included in AILA’s *Occupational Guide Book: Immigration Options for Doctors*, (AILA 1995).

Appeals Office (AAO) and court decisions, Service Center adjudications in past O-1 and Priority Worker cases, and the author's 30 years of experience with Priority Worker cases, certain adjudication trends have become apparent. A careful reading of two federal court decisions and two AAO decisions may richly reward any immigration lawyer preparing Priority Worker cases. These cases address critical evidence and adjudication issues including the standard of proof in Priority Worker cases. Intelligent application of the legal analysis and concepts discussed in the *Buletini*, *Chawathe*, *Kazarian* and *Dhanasar* cases can help build cases that are robust enough to stand up to USCIS administrative appeals and Federal Court review.

- *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994);
- *Kazarian v. USCIS*, 580 F. 3d 1030 (9th Cir. 2009) and 596 F. 3d 1115(9th Cir. 2010);
- *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), Interim Decision #3700; and
- *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016)

In general, the author has found that certain common characteristics of reference letters can tend to “tip the scales” in a positive or negative direction. Appendix D: “Comparative Checklist of 10 Common Characteristics of Positive Reference Letters (Stronger Evidence) and 10 Common Characteristics of Neutral/Negative Reference Letters (Weaker Evidence)” attempts to distill in summary fashion the author's experience of I-140 and O-1 USCIS adjudication trends in recent years.

Reference letters should evidence, when possible, that the beneficiary's research has already had a significant impact on the field. Reference letters should describe the impact on the field using non-technical language that can be easily understood by the USCIS adjudicator. A lawyer, of course, must work in good faith and within the limits of the available evidence, but in general, letters describing the beneficiary's “track record” of past achievements, if available, are more helpful than letters that say that the beneficiary's research has the “potential” to be of future significance in the field.

TRAPS FOR THE UNWARY

Some potential traps for lawyers handling U.S. immigration projects for professors and researchers include:

1. Coping with the J-1 §212(e) two-year home country residence requirement can be extremely complicated and take much longer than expected (*i.e.*, the processing of waivers of the two-year requirement can take up to one year or more). Plan accordingly.
2. Remember that an O-3 spouse may not work, but a J-2, L-2, E-1 or E-2 spouse and certain H-4 spouses may work.
3. TN status for Mexican or Canadian citizens can be fast, but may be problematic for tenured or tenure-track professors because INA §214(b) still applies to TN's, and TN cannot be used for purely clinical physicians. Canadian and Mexican faculty TN's are intended for temporary assignments in increments of up to three years for professors and researchers working in non-permanent positions.
4. A professor or researcher generally cannot fulfill the J-1 §212(e) two-year residence requirement in any country other than the country of the J-1's last lawful permanent residence just prior to initial J-1 entry, as listed on the individual's DS-2019. The Department of State continues to assert that the J-1 two-year residence requirement must be fulfilled by EU nationals through physical presence in the last country of residence alone, not by physical presence in a combination of multiple European Union countries.⁵
5. “The top of the class doesn't always marry another from the top of the class.” One frequent scenario: both spouses are professors or researchers, J-1 and J-2. In this scenario, the J-1 spouse may apply for an O-1 while the J-1 waiver application is pending. However, if the J-2 spouse is not “O-1-able”, changing the J-1 to an O-1 has the unfortunate side effect of ending the J-2 status of the spouse *and* consequently also ending any J-2-based employment authorization held by the J-2. In this case, the J-2 spouse cannot independently obtain work authorization as an H-1B because they are still subject to §212(e) until the J-1 waiver is

⁵ “FAQ's: Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement” by U.S. Department of State @travel.state.gov

approved for the principal or until the J-1 and J-2 have satisfied the requirement by physically residing in the required country for two years.

6. J-1 Catch-22: Department of State still takes the position that the J-2 dependent cannot fulfill the two-year requirement independently.⁶ So, if the J-2 spouse goes home for two years but the J-1 principal does not get a waiver (e.g., stays here on an O-1), the J-2 is still subject to the §212(e) two-year residence requirement. Also, if the J-1 principal returns to the required country for two years, but the J-2 spouse remains in the U.S. for those two years, the J-2 is still considered subject to §212(e) unless an exception applies.
7. Check to see if the spouse, who may now be a J-2, was ever a J-1 in their own right. This is not uncommon among couples with post-graduate education. If you have two professors or researchers who are married to one another and each has incurred an independent individual §212(e) requirement as a J-1 principal, each must independently qualify for a §212(e) waiver. There is no “free ride” for one J-1 spouse on the other J-1 spouse’s §212(e) waiver. Two successful separate waiver strategies are needed, one for each.
8. Do not confuse scarcity with “Extraordinary Ability.” For example, if there are only 20 individuals with expertise in the field, you still have to show that the person is among a small percentage at the *top* of the field (top 3 of 20? top 5 of 20?), not merely that there are very few people in the world with such expertise.

PRACTICAL TIPS

Some practical tips for advising and representing professors and researchers in U.S. immigration matters include:

1. Do not underestimate the complexity and extent of supporting documentation required for Priority Worker projects. The complexity of the U.S. immigration system overall is well-known. Less well-known is that U.S. immigration casework for professors, researchers and doctors can often be at the highest level of complexity of all occupations.
2. Plan ahead and start at least a year in advance, if possible. A best practice is to begin work on the needed immigration casework a minimum of six months to one year or more before the academic or researcher needs to be on the payroll of the new employer with a U.S. work authorization. Faster or transitional strategies may be available, but they are typically labor-intensive, less reliable and/or very costly. Pursuit of such “emergency” strategies can add greatly to the expense and uncertainty of what can already be a very expensive and uncertain process.
3. Letters in support of O-1 petitions and EB-1 I-140 petitions should, to the greatest extent possible, come from writers other than “friends and family” of the applicant (i.e., the beneficiary’s mentors, co-authors and collaborators should not be the sole reference letter writers).
4. Re: Hardship waivers of the §212(e) two-year requirement: Don’t forget to prove “double hardship” (i.e. hardship to USC/LPR relative if the USC/LPR relative leaves the U.S. *and* hardship if the USC/LPR relative stays and the alien spouse/parent leaves).
5. Re: IGA (Interested Government Agency) waivers of the §212(e) two-year residence requirement, remember that: “Every Federal Agency can be an IGA.”⁷ In most fact patterns, there are many possible Federal Agency Sponsors that may be identified by resourceful immigration counsel.
6. If the professor or researcher will be seeking a waiver of the §212(e) two-year requirement and the professor or researcher is running out of J-1 time, they should consider applying for the maximum possible J-1 extension *before* the J-1 waiver application is submitted, when possible. A key consideration is to make sure that the J-1 extension is approved before the J-1 waiver is favorably recommended by the U.S. Department of State. Applying for a new J-1 extension *after* the Department of State’s Waiver Review Division (WRD) has issued a favorable J-1 waiver recommendation letter to USCIS can be a self-inflicted

⁶ Id.

⁷ “Every Agency Can Be An ‘Interested Government Agency’ - Developing 212(e) Waiver Options for Foreign Physicians,” by Scott M. Borene, included in AILA’s Occupational Guide Book: *Immigration Options for Doctors*, first edition (1995).

wound resulting in cancellation of the J waiver and re-subjecting the J-1 to the §212(e) 2-year requirement.

7. Re: Satisfaction of the J-1 §212(e) two-year last country of residence requirement by physical presence in the J-1's required country: Counsel the client before they leave the U.S. about the need to keep careful documentation of their return to, and continued physical presence in, the required country (keep all passport stamps, copies of old and new passports, telephone bills, rent/mortgage statements, credit card statements, paycheck stubs, etc.) Warn the client that time spent in countries other than the designated country of last residence will **not** be credited towards satisfaction of the §212(e) two-year requirement.
8. There appears to be no requirement that the individual's two-year residence in their home country must be completely continuous with no interruptions in order to satisfy §212(e). Also, individuals subject to §212(e) are generally eligible to apply at a consulate for any kind of nonimmigrant visa except H-1, L-1 or K-1.⁸ In appropriate cases, a professor or researcher may be able to satisfy the 24 month requirement in installments. For example, it may be possible to satisfy the 2-year requirement by physical residence of perhaps 6 months per year over a period of 4 years and to enter the U.S. intermittently in other nonimmigrant categories such as O-1, B-1, F-1 etc. until the §212(e) home country residence requirement is completely satisfied. There is a common sense limit to how intermittent the installment periods of time spent in the home country may be. In general, the higher the percentage of time spent in the home country and the fewer the interruptions during the 2-year period of cumulative stay in the required country during the period the J-1 is satisfying the requirement, the better.
9. Remember that for many years USCIS has taken the position that it is emphatically the USCIS (formerly United States Department of Justice, Immigration and Naturalization Service) that decides whether or not a person is subject to §212(e), not the Department of State or the consular officer who issued the J-1 visa or who signed the DS-2019. See the Momboisse Legal Opinion Memorandum cited below.⁹ Raymond M. Momboisse was the General Counsel for the Immigration and Naturalization Service (INS), which was then part of the U.S. Department of Justice.
10. When a professor or researcher cannot secure the cooperation or sponsorship of the employer or cannot obtain the permanent full-time job offer required for the Outstanding Professor or Researcher category, consider the permanent resident options of a self-petition or third-party petition in the Extraordinary Ability or National Interest Waiver category.
11. Carefully consider the possible interactions among multiple immigration issues and case-specific facts before choosing an immigration strategy in each case. (The attached checklist of beneficiary questions in Appendix C and the Quick Screen Worksheet (Appendix E) can help identify relevant issues and facts in specific cases.)
12. Carefully analyze all of the temporary and permanent immigration options at the outset. (The attached checklists of temporary options (Appendix A) and permanent options (Appendix B) can be helpful in identifying options.
13. Always have a backup work authorization plan available that can be activated if the primary strategy is delayed or unsuccessful.

⁸ INA §212(e), 8 USC §1182(e).

⁹ INS General Counsel Legal Opinion (May 27 1989) reprinted in 66 Interpreter Releases 888 (1989). See also Cable from James A. Puleo, INS. Asst. Commissioner for Adjudications to all INS field offices (May 10, 1989) reprinted in 66 Interpreter Releases 577 (1989).

Checklist of Some Temporary Immigration Options for Professors and Researchers

APPENDIX A TO “PROFESSOR YES - IMMIGRATION OPTIONS FOR PROFESSORS AND RESEARCHERS”

by Scott M. Borene

I. Options with No (or Extremely Limited) Employment Authorization

- 1. B-1 (with or without honorarium)
- 2. WB (with or without honorarium)

II. Options with Position-Specific/Employer-Specific Employment Authorization

- 1. H-1B (Specialty Occupation Cap-Subject Employer)
- 2. H-1B (Cap-Exempt Employer) (e.g. Higher Education Employer)
- 3. H-1B (Temporarily Cap-Exempt Employer due to a “qualified affiliation” with a Cap-Exempt Employer)
- 4. H-1B “Hybrid” Dual Employers (A first H-1 Cap-Exempt Employer as foundation for the temporary H-1 Cap-Exemption plus a second add-on H-1 from a Cap-Subject employer)
- 5. H-1B1 (Chile or Singapore) (Specialty Occupation)
- 6. E-3 (Australian Specialty Occupation)
- 7. O-1 (Extraordinary Ability)
- 8. TN (Teaching/Research position)
- 9. F-1 Student (with on-campus Employment Authorization)
- 10. F-1 Student (with Curricular Practical Training (CPT) Employment Authorization)
- 11. F-1 (with Optional Practical Training (OPT) or STEM OPT Employment Authorization)
- 12. F-1 Student (with off-campus “Affiliated” Employment Authorization)
- 13. F-1 Student (with Economic Hardship Employment Authorization)
- 14. J-1 (Professor or Research Scholar)
- 15. J-1 (Short Term Scholar)
- 16. J-1 (Intern or Trainee)
- 17. J-1 (ECFMG-Sponsored Medical Resident/Fellow for Graduate Medical Education (GME))
- 18. J-1 (ECFMG-Sponsored Researcher)
- 19. J-1 (with Academic Training Employment Authorization)
- 20. Q-1 (International Cultural Exchange Visitor)
- 21. R-1 (Religious Worker)

III. Options with Broad Employment Authorization

- 1. Pending Applicant for Adjustment of Status to Permanent Residence with Employment Authorization
- 2. J-2 (Spouse of J-1) with Spousal Employment Authorization
- 3. Spouse of E-2 or E-1 with Spousal Employment Authorization
- 4. L-2 (Spouse of L-1) with Spousal Employment Authorization
- 5. TPS (Temporary Protected Status) with Employment Authorization
- 6. H-4 (Spouse of certain H-1’s with Spousal Employment Authorization)
- 7. DACA-based Temporary Employment Authorization
- 8. Asylee or Refugee

IV. Options of Last Resort

- Consider any of the other designated categories of employment authorization described at 8 CFR §274a.12(a).

Checklist of Some Permanent Immigrant Options for Professors and Researchers

APPENDIX B TO “PROFESSOR YES - IMMIGRATION OPTIONS FOR PROFESSORS AND RESEARCHERS”

by Scott M. Borene

I. Some Employment-Based Immigrant Visa Options

- 1. EB-1-1 Extraordinary Ability (Employer-Sponsored)
- 2. EB-1-1 Extraordinary Ability (Self-Sponsored)
- 3. EB-1-2 Outstanding Professor or Researcher (Must be Employer-Sponsored)
- 4. Schedule A, Group II (Exceptional Ability)
- 5. EB-2 or EB-3 Conventional PERM Labor Certification
- 6. “Special Handling” or “Special Recruitment” PERM Labor Certification
- 7. National Interest Waiver – Employer-Sponsored (pursuant to INA §203(b)(2)(B)(i))
- 8. National Interest Waiver - Self-Sponsored (pursuant to INA §203(b)(2)(B)(i))
- 9. EB-2 National Interest Waiver (M.D. 5-year Plan) – Employer-Sponsored (pursuant to INA §203(b)(2)(B)(ii))
- 10. EB-2 National Interest Waiver (M.D. 5-year Plan) – Self Sponsored (pursuant to INA §203(b) (2)(B)(ii))
- 11. Schedule A, Group I (RN)
- 12. Schedule A, Group I (Physical Therapist)

II. Family-Based Options

- 1. Family-Based Permanent Residence (Sponsored by USC or LPR Spouse)
- 2. Family-Based Permanent Residence (Sponsored by USC or LPR Parent)
- 3. Family-Based Permanent Residence (Sponsored by Adult USC Child)
- 4. Family-Based Permanent Residence (Sponsored by Adult USC Brother or Sister)

III. Some Other Options

- 1. Diversity Visa Lottery
- 2. Investor (EB-5)
- 3. Asylum-Based Permanent Residence

IV. Spouse/Fiancé(é)-Based Options

Reanalyze all of options listed above, substituting the professor or researcher’s spouse/fiancé(e) as the principal beneficiary

Checklist of Key Questions for Professors and Researchers Seeking Employment Authorization

APPENDIX C TO “PROFESSOR YES—IMMIGRATION OPTIONS FOR PROFESSORS AND RESEARCHERS”

by Scott M. Borene

I. Personal/Career Plans

- 1. What are your short-term career plans (*i.e.*, the next 3 years)?
- 2. What are your long-term career plans?
- 3. If you do not have a U.S. job offer in your field, how do you plan to support yourself and what are your proposed activities in the U.S. for the next year?
- 4. Do you have any personal/family concerns that may outweigh your immediate career plans?

II. Current/Proposed Employment

- 5. Do you have an offer of full-time or part-time employment in the U.S. in your field of professional expertise?
- 6. If a physician, do you have an offer of employment at a worksite located in a Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA)?
- 7. Does your job offer create a legal employer – employee relationship (*i.e.*, IRS Form W-2 payroll employment) or an independent contractor relationship (*i.e.*, IRS Form 1099 self-employment)?
- 8. What is the approximate percentage mix of duties of your proposed employment – allocated among clinical, teaching, research, and other duties?
- 9. Are you currently engaged in teaching, research or clinical activities that are funded in whole or in part by any U.S. Federal Government Agency?
- 10. Are you currently engaged in teaching, research or clinical activities of particular interest to any U.S. Federal Government Agency?

III. Past Employment

- 11. Have you had 3 or more years of full-time teaching or research experience?
- 12. Have you ever engaged in “moonlighting” employment while in the U.S.?
- 13. Have you ever engaged in employment (including self-employment) within the U.S. that was not authorized in advance in writing by U.S. immigration authorities?

IV. Immigration Credentials

- 14. If a physician, do you have currently valid ECFMG Certification?
- 15. If a physician, have you taken and passed all 3 parts of USMLE?
- 16. If a health-care worker as defined in INA §212 (a)(5)(c), have you received the required immigration “Health Care Certification” documentation from CGFNS or “an equivalent independent credentialing organization” approved by U.S. immigration authorities?

Note: this immigration credentialing requirement applies to the following occupations: (1) licensed practical nurses, licensed vocational nurses, and registered nurses; (2) occupational therapists; (3) physical therapists; (4) speech language pathologists and audiologists; (5) medical technologists (clinical laboratory scientists); (6) physician assistants; and (7) medical technicians (clinical laboratory technicians) per 8 CFR §212.15(c).9

V. Professional and Educational Credentials

- 17. What are your principal research interests?
- 18. If a physician or healthcare professional, what are your principal areas of clinical expertise?
- 19. Do you hold a full and unrestricted professional license in any U.S. state or foreign country?

- 21. If a physician, have you completed, in whole or in part, specialty or sub-specialty training or Board Certification in any recognized Medical Specialty in any county?
- 22. Have you received any awards, scholarships, grants, prizes, or similar merit-based recognition for your educational or professional achievements since the age of 16?
- 23. How many peer-reviewed publications have you completed and published?
- 24. How many invited presentations at professional conferences have you completed?
- 25. Have you been an invited reviewer or editor of articles for professional/scientific journals in your field?

VI. Immigration/Personal History

- 26. What is your country of birth? Do you hold citizenship in more than one country? Which countries?
- 27. Are you married? If you are not married, do you have plans to get married in the next year or two? Do you or your spouse have any children?
- 28. If you are married, what countries does your spouse have citizenship in?
- 29. Do you or your spouse have any close family members (living or deceased) who already hold U.S.citizenship or LPR status? (Close family members include: spouse, fiancé(e), parent, grandparent, brother, sister, brother-in-law, sister-in-law, or child) Do you or your spouse have parents or grandparents born in the U.S. or who ever lived in the U.S.?
- 30. Have you ever been in the U.S. in J-1 or J-2 Exchange Visitor Status?
- 31. Have you, or has anyone on your behalf, ever applied for a waiver of the J-1 two-year residence requirement?
- 32. Have you, or has anyone on your behalf, ever filed an I-129 (Petition for Nonimmigrant Worker), I-140(Immigrant Visa Petition), I-130 (Family-Based Immigrant Visa Petition), or ETA 750A or ETA 9089 (Labor Certification)?
- 33. Have you ever been refused a visa at a U.S. Consulate, refused entry to the U.S. or been placed in secondary inspection when seeking entry to the U.S.?
- 34. Have you ever had any difficulties with U.S. immigration or consular officials anywhere in the world?
- 35. Have you ever provided any inaccurate information or supporting documentation (spoken or written) to any U.S. immigration or consular office?
- 36. Have you ever failed to maintain full compliance with all applicable U.S. immigration laws?
- 37. Have you ever had any difficulties with the police or law enforcement authorities in any country in the world?
- 38. Do you or your close family members have reason to fear mistreatment or persecution if you were to return to your country of nationality or last residence?
- 39. Would you or your close family members experience extreme hardship if you were to return to your country of nationality or last residence?
- 40. Could your spouse or fiancé(e) qualify for E-2 Treaty Investor or L-1 intracompany transfer status with a suitable investment in “qualified U.S. business enterprise”?

VII. Spouse/Fiancé(e) Questions

Repeat all of the questions above, reanalyzing all of the temporary and permanent options considering the principal’s spouse or fiancé(e) as the principal applicant.

**A Comparative Checklist Identifying 10 Common Characteristics
of Positive Reference Letters(Stronger Evidence) and
10 Common Characteristics of Neutral/Negative Reference Letters(Weaker Evidence)
APPENDIX D TO “PROFESSOR YES—IMMIGRATION OPTIONS
FOR PROFESSORS AND RESEARCHERS”**

by Scott M. Borene

In general, the author has found that the following characteristics of reference letters can tend to “tip the scales” in a positive or negative direction:

10 Common Characteristics of Positive Reference Letters (Stronger Evidence)	10 Common Characteristics of Neutral/Negative Reference Letters (Weaker Evidence)
Stronger letters are written by:	Weaker letters are written by:
1. top experts in the field	1. lesser experts
2. arms-length experts	2. primarily co-authors, mentors, and collaborators of the beneficiary
Stronger letters emphasize:	Weaker letters emphasize:
3. specifics	3. vague words of praise
4. how the beneficiary’s work has already impacted the field	4. the possible future benefits of the beneficiary’s future works
5. actual past achievements of the beneficiary	5. potential contributions to the field by the beneficiary
6. patents already granted, licensed and in use	6. patent applications pending or planned
Stronger letters evidence:	Weaker letters evidence:
7. the practical applications of the beneficiary’s work	7. the beneficiary’s novel theories
8. the beneficiary’s work has been heavily cited in professional journals	8. few or no citations of the beneficiary’s work
9. favorable citations of the beneficiary’s work	9. neutral or negative citations of the beneficiary’s work
10. the beneficiary’s work is already in use in the field	10. the beneficiary’s work may be of speculative future benefit to the field

Quick Screen Immigration Intake Worksheet

(For use as an Immigration Issue-spotter during first interview with beneficiary/prospective client)

APPENDIX E TO “PROFESSOR YES—IMMIGRATION OPTIONS FOR PROFESSORS AND RESEARCHERS”

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Misrepresentations? (Any? Ever? In any spoken or written communication with U.S. Consulate, USCIS, CBP, DOL, DOS or any other U.S. Immigration-related agency.)

Unauthorized Employment? (Any in the U.S.? Ever?) Including 1099 independent contractor, paid cash “off the books” or paid to a third party or offshore account or paid “in kind”—strictest test is *quid pro quo* test—did the non-citizen ever perform any activity within U.S. territory for which they received compensation directly or indirectly?

Immigration History? For Individuals—when was first entry to the U.S.? Most recent entry? List every visa or status application ever attempted. Ever denied NIV? Ever detained by immigration enforcement? Ever been refused an IV or NIV? Ever refused entry? Ever withdrawn entry? Ever in immigration court? Ever in Secondary Inspection? **For Employers**—ever received an RFE or denial of any employer-filed NIV or IV petitions? Ever audited by USCIS or by ICE for any reason? Or by DOL for I-9 or Labor Cert compliance?

Criminal History? (Any, Ever?) Have you ever had any involvement with law enforcement in any country in the world in your entire life involving anything more serious than a parking violation, including other traffic violations, speeding, DUI etc. and juvenile offenses, expunged, dismissed, pardoned, found not guilty or dropped charges cases?)

Maintenance of Status? (Ever failed to maintain compliance with any requirement of any non-immigrant status)

J-Status? Ever been physically present in the U.S. for even one moment as a J-1 or J-2? (Needed to evaluate whether non-citizen subject to §212(e) 2-year requirement)

Family? Do you have any close relatives who are currently in the U.S. or who now have (or ever had) U.S. Lawful Permanent Residence or U.S. Citizenship? –including parents, step-parents, spouses, children, siblings or grandparents (possible derivative claim?)

As an easy-to-remember shortcut, the following mnemonic acronyms
can be useful tools to recall this issue-screening checklist.

Please meet two “imaginary friends” who can help you screen all your immigration inquiries quickly:

“Mis UnImmCrim” and “M/s. J. Fam”