

# Who are Priority Workers

**By Reuben S. Seguritan**

*November 1994*

In the first preference employment-based category, there are three groups of priority workers. To these workers, processing time for immigrant visas is shorter than for other workers under different categories, because to a large extent, these alien may bypass the cumbersome procedure of the labor certification requirement.

These three groups are:

1. Aliens of "extraordinary ability" in the sciences, arts, education, business or athletics.
2. Outstanding professors and researchers.
3. Managerial and executive transferees.

These priority workers have equal access to available visas.

## ALIENS OF EXTRAORDINARY ABILITY

An alien in this category may file his or her petition because a specific job offer is not required. The alien, however, must continue to work in the field in which he has extraordinary ability. This ability is defined by the INS as having sustained national or international acclaim, and must have achievements recognized in the field through extensive documentation. The INS allows for the surpassing characteristic of "extraordinary ability" which is of a standard higher than anything INS has set, including that of "exceptional ability." In its final regulation, INS defines "extraordinary ability" as a "level of expertise indicating that the individual is one of those few who have risen to the top of the field of endeavor."

To file a petition, the alien must submit the following: INS form I-140 filed by him or another on his behalf and evidence to establish that alien intends to work in his field of endeavor such as letters from prospective employers; contracts and prearranged commitments, and statement detailing plans to work in the US. The crucial part, however, is the documentation to establish alien's extraordinary ability. In the absence of receipt of a major, internationally recognized award such as a Nobel Prize or Academy Award, the alien may submit any of the following:

1. Evidence of participation as a judge in the work of others in the same or allied field of specialization.
2. Receipt of lesser nationally or internationally recognized prizes or awards for excellence.
3. Published materials in professional or major trade publications about the alien relating to alien's work in the field of endeavor.
4. Evidence of having received significantly high remuneration for services in his field in relation to others.
5. Evidence of commercial successes in the performing arts, as shown by box office receipts of record, cassette, compact discs or video sales relating to field of endeavor.
6. Evidence of performance in lead or critical role for establishments with distinguished reputations.
7. Evidence of display of work in the field at artistic exhibitions.
8. Evidence of original scientific, scholarly, or artistic contributions of major significance in the field of endeavor.

If extraordinary ability in the alien's field of endeavor cannot be measured by the above standard, other comparable evidence may be submitted.

## OUTSTANDING PROFESSORS AND RESEARCHERS

The second priority groups are the outstanding professors and researchers. A job offer is required in the nature of a tenured teaching or research position or a research position having no fixed term with a possibility of a permanent position, or position with a private employer with at least three full-time researchers and a record of documented accomplishments in the research field.

Other than the above job offer, such an alien belonging in this group must have recognition internationally in a specific academic field, and at least three years of teaching or research in the field either full time or gained while working on a advanced degree.

Having satisfied the above conditions, the employer offering the employment to the alien must file a petition on Form I-140 and include the following documentation: Letter of employment and proof alien has requisite credentials that qualify him as an outstanding professor or researcher.

"Outstanding" in an academic area is defined as having acquired a body of specialized knowledge offered for study at an accredited US university or institution of higher education." To determine this, alien must submit at least two of the following:

- Membership in associations in the academic field which require outstanding achievements of their members.
- Receipt of major international prizes or awards for outstanding achievement in the academic field.
- Published materials in professional publications written about the alien's work in the field. The documentation should include title, date and author).
- Evidence of alien's participation as individual or panel judge in the work of others in the same or allied field.
- Authorship of scholarly books or articles in scholarly journals with international circulation.

Documentation of qualification of alien as "outstanding" includes peer-reviewed presentations at academic symposia, peer-reviewed articles in scholarly journals, testimony from other scholars on alien's contribution to the field, entries in a citation index citing alien's work as authoritative, and participation as a reviewer for peer-reviewed scholarly journals.

## MANAGERIAL OR EXECUTIVE TRANSFEREES

These workers were included under the priority list to aid international companies intensifying operations in the US. Without the requirement for labor certification, companies can transfer top-level executives from one company abroad to the US with relative ease. The delay occurs only while waiting for the processing of petition papers and the adjustment of status application and the time an adjustment interview had been set and the actual interview.

Managerial capacity and executive capacity are defined as:

1. Management of an organization, department, component or function
2. Supervision and control of managerial, personnel or other essential functions
3. authority to make personnel decisions
4. discretionary privilege over operations or a function.

The INS enhances the definition by underscoring the management of a function rather than personnel and the omission of the previous ruling that barred including executives who spend substantial time in actual production or sales.

The rules that apply for executive and managerial transferees seeking positions are similar to that placed on managers or executives under the L-1 nonimmigrant visa category. Two of these major requirements are that the employer should be doing business in the US in a regular and systematic way indicative of continuous provision of goods and services and that the alien spends one year based abroad, out of three years working for the US-based company in a top-level position. The employer itself must be doing business in the US for at least one year. An "affiliate" must have controlling interest in the business or hold approximately the same proportion of shares with other shareholders in either business.