

National Interest Waiver (NIW) Permanent Residence

International Scholar Services

<https://www.purdue.edu/IPPU/ISS/Scholar>

Purdue Policy

Permanent Residence Sponsorship <u>Must</u> be Provided	The Department must direct ISS if it wants to sponsor Permanent Residence	The position is ineligible for Permanent Residence Sponsorship
<ul style="list-style-type: none">➤ Tenured faculty➤ Tenure-track faculty➤ Clinical faculty➤ Professors of Practice	<ul style="list-style-type: none">➤ Research Faculty➤ Continuing Lecturers and other staff who “instruct”➤ Research Staff➤ Any other staff for whom permanent residence is not prohibited	<ul style="list-style-type: none">➤ Postdocs➤ Short-Term Lecturers➤ Visiting faculty or scholars

Defined Terms

- **Permanent residence**

- Normally, foreign workers are presumed to be “temporary”. Their work “visas” (H-1B, etc.) have limits on them. For example, foreign workers normally may hold H-1B status only for 6 years.
- Permanent residence enables a foreign person to reside in the USA indefinitely. It also permits them to freely access the US Labor Market. It is documented by a “greencard”.
- You are reviewing this powerpoint because you or your ISS Liaison has indicated that permanent residence sponsorship is desired for an employee within your Department

- **Employment-Based**

- Permanent residence can be based on a familial relationship or an employment relationship. Purdue pursues permanent residence that is based on employment relationships. This is often abbreviated to “EB”

- **Opportunity**

- The employment position that the foreign worker “will” hold.
- The law views the “opportunity” as something that will exist in the future, once the greencard is issued.
 - The fact that the worker is employed now by Purdue in a remarkably similar role is a magical coincidence that the law considers irrelevant.
 - The permanent residence sponsorship process has nothing to do with the foreign worker’s current permission to work.

Defined Terms

- **Preference Category**

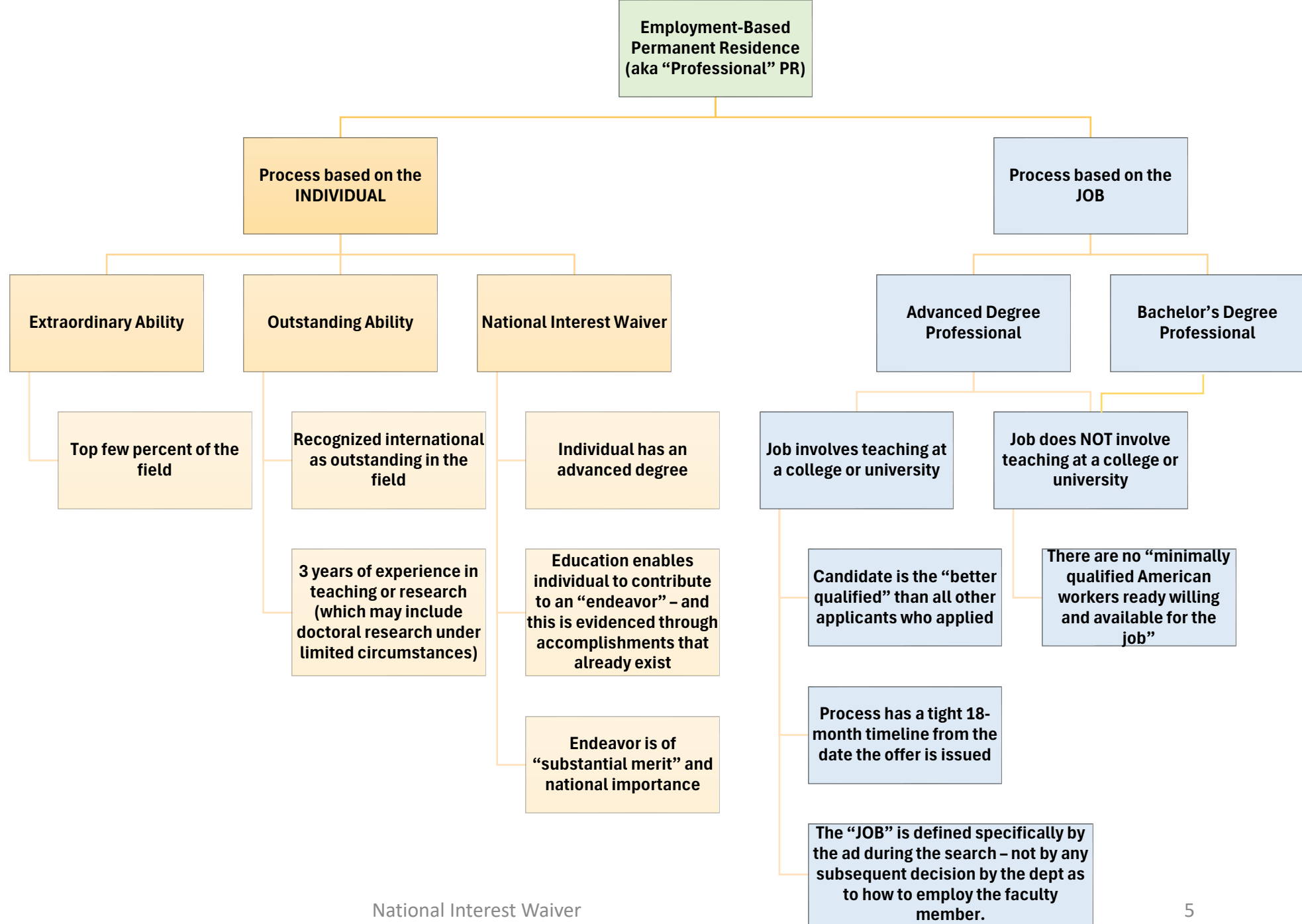
- US law sets a hierarchy as to how much the USA “prefers” different kinds of foreign workers, as part of the permanent residence process
- The preference category is based on the minimum requirements for the position (Job Family and Career Stream) as set by HR and reflected in SuccessFactors
 - EB-1 is for positions where the researcher has “significant” accomplishments
 - EB-2 is for positions where a master’s degree is the minimum education requirement
 - EB-3 is for positions where a bachelor’s degree is the minimum education requirement
- The choice of Preference Category impacts the total amount of time involved in receiving the greencard

- **Beneficiary / Foreign Worker**

- The foreign worker for whom permanent residence sponsorship is sought.
- Usually this is a current Purdue employee holding, for example, H-1B status.
 - Some immigration classifications do not permit “immigrant intent” – the intention (by the foreign national) to immigrate (reside and work indefinitely in the USA). Examples are F and J status. Normally we move foreign nationals into an appropriate immigration classification as part of our preparation for permanent residence sponsorship.

Paths to Permanent Residence

- There are two general “kinds” of employment-based permanent residence process:
 - Based on the individual’s accomplishment and impact
 - Based on the individual’s job and the hiring department’s needs



National Interest Waiver (NIW)

- Normally, the government protects the US labor market for US workers
 - PR is available if an employer says that they have a ‘permanent’ need for which there are no US workers ‘ready willing and available’
 - Labor Certification is the process of demonstrating that US workers are not available for whatever it is the employer needs to fill
- NIW is based on the theory that sometimes, the US benefits if ‘special individuals’ are allowed into the labor market, even in the absence of a specific employer with a ‘permanent’ need for that individual’s skillset
 - One aspect to the petition is showing that the the national interest is retaining this unique person is more that the national interest in protecting the labor market
 - The WAIVER in “National Interest Waiver” therefore is a waiver of labor certification
 - Which is in turn a waiver of the need to show a ‘permanent’ need by the employer

National Interest Waiver (NIW)

- Does not involve Department of Labor
 - Source of increasing delays in the “Job-based” permanent residence processes
- This means roughly 18+ months of government processing time is eliminated from the permanent residence process
 - Instead, the petition is filed directly with the USCIS

National Interest Waiver (NIW)

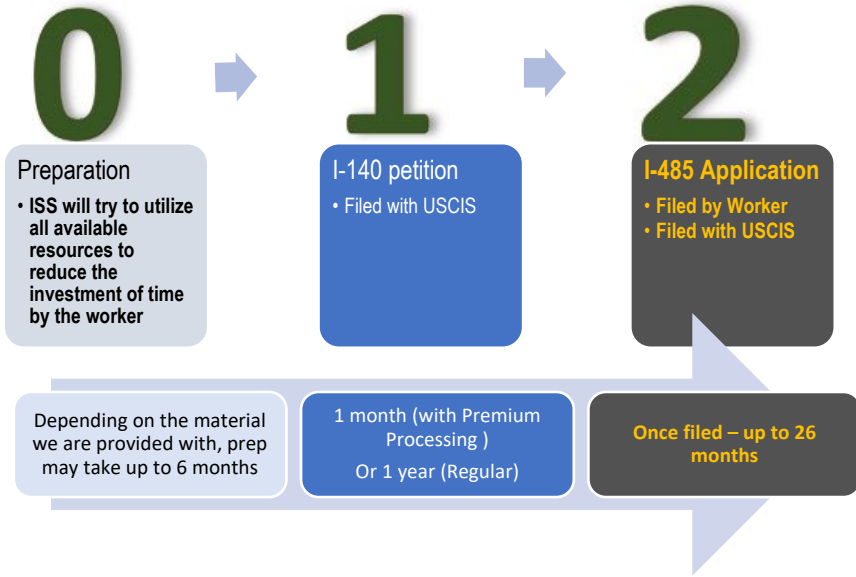
- Rules
 - The proposed endeavor is of substantial merit and national importance;
 - The applicant is well-positioned to advance the endeavor; and
 - On balance, it would be beneficial to U.S. to bypass usual EB-2 requirement of a job offer and PERM labor market test.
 - Documentation is focuses on accomplishment and impact in the field
 - Feb 2022 policy change by USCIS “presumes” a person with a STEM PhD is “in the national interest”
- Process
 - Form I-140 Petition for Immigrant Worker filed with USCIS
 - Regular Processing = ~ 45 days; “Premium Processing” = 15 business days

National Interest Waiver (NIW)

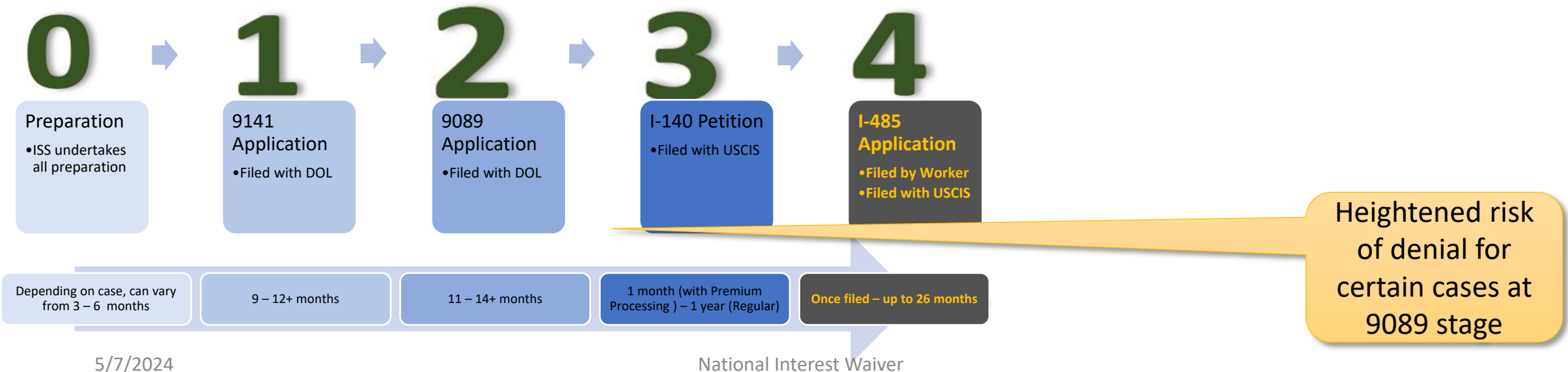
- Rules
 - The proposed endeavor is of substantial merit and national importance;
 - The applicant is well-positioned to advance the endeavor
- USCIS does not define how we prove someone is well-positioned
 - Practice draws on similar categories as in other kinds of filings
 - Receipt or nomination of major national or international award such as a Nobel Prize;
 - Original scientific, scholarly, or business-related contributions of major significance in the field
 - “Judge of the work of others” (peer review, chairing conferences, etc.)
 - Authorship by the individual of scholarly articles in the field (with good citation rates)
 - Published material about the individual or their work
 - Serving in a leadership, critical or essential capacity for distinguished organizations
 - The individual's receipt of a high salary
 - Membership in associations in the field where eligibility is based on outstanding achievements
 - Other comparable documentation

NIW

Relative Timelines



Job-Based Processes



Next Steps

1. The Foreign Worker will receive an email with a link to an eform entitled “Initiate Awesomeness Assessment”
 - Once submitted, ISS will evaluate whether the case has a likelihood of success, or whether the worker could improve on certain aspects of their documentation
 - If the case is viable now, ISS will “launch” the NIW
 - If the case is not yet viable, ISS will continue forward with the “Job-Based” permanent residence process, while the worker improves their documentation. We will calendar the NIW for re-evaluation in a year.
2. *If the case is viable*, ISS will send three more emails
 - Email #1 to the Worker
 - Links to an eform that asks for details and documents to support the petition
 - Email #2
 - Links to an eform that collects information about the Reference Letter writers the worker proposes we use. More about that is provided later.
 - Department Eform
 - An eform also is sent to the Worker’s supervisor to collect information about the “national priority” the supervisor believes best fits the worker’s qualifications and work

If the Case is Viable

Developing the NIW

Support Details and Documents

- NIW are ‘won’ by details and documentation
 - The government is not persuaded by conclusions or statements
 - We must present specific details, rather than conclusions
 - We also must present documents, the existence of which make our details “more likely than not” to be true
- There are two types of support documents:
 - Objective external documents.
 - Copies of documents such as your degree certificate or transcripts, as well as other documents that measure your work, such as citation reports
 - Subjective external documents.
 - “Testimonial” letters from distinguished members of the field about your accomplishments and impact (discussed further on the next slide)
- Eform #1 focuses on collecting both
 - Details of your impact and accomplishment, and
 - Collecting your Objective Documentation
- When responding to Eform #1
 - Provide full, detailed answers to all questions (most text boxes have 5,000 characters; you also can draft details in a Word document and provide that to your counselor via the file-sharing method described below)
 - Provide all documentation that you have that supports your details either through upload or file-sharing.
- Documents
 - The eform provides the opportunity to upload documents, BUT MyISS is relatively fragile when it comes to uploads
 - The total size of all uploads that can be submitted within one eform is 25 MB
 - Often MyISS struggles if the total size approaches 22 MB
 - We recommend you use the “in-eform’ upload fields only if the documentation you have is small in size.
 - If you try to submit an eform with too large a volume of uploads, the eform will fail and all your information will be lost
- File Sharing
 - We recommend that if your volume of documents is larger than ~22 MB, you share those with us using a secure file-sharing tool
 - Purdue utilizes Box for secure and/or large volume file transmission.
 - <https://purdue.account.box.com/login>.
 - There is a text box at the end of the eform where you can list the documents that you will provide to us.

Testimonial Letters

- This eform collects the names and details of the individuals (“Reference Letter writers”) whom you suggest would provide the testimonial letters to support your accomplishment-based permanent residence petition.
 - Do not worry about asking writers if they will agree yet – we need to evaluate our totality of documents and possible writers before any decisions can be made
- Number of Letters
 - In the end, we generally want about 6 letters. To ensure that we can have 6, high-quality letters in the end, we ask for the names and details of at least 8 individuals, and we then can discuss and reduce from there.
- Length of the Letters
 - Once finished, letters range from 1.5 - 3 pages, but in general we want the letters shorter rather than longer.
 - They should be written in accessible, understandable terms, without jargon. They do not need to be precise to the point of being scientifically accurate, but they also cannot be "wrong".
 - They should, in general, present an image of you and/or an accomplishment within the field, much as an impressionistic painting presents an image - the relative sense and placement of 'color' that results in understanding is more important than a blueprint that simply confuses the government adjudicator.
- What the Letters will Say
 - The letters that are provided to support accomplishment-based immigration processes are not your 'typical' reference letter.
 - It is irrelevant whether you are a nice person, a good collaborator, a good team-member, or a good communicator.
 - It is undesirable for there to be references to your promise, or to your relative position within the field "given your youth" (or similar statements)
- Reference Letter Planning Sheet
 - This will be emailed to you separately.
 - Use it to organize who you want to provide letters to you, which provides the above-desired diversity of referee, while still providing coverage of most of the letter topics (next slide)
 - When you are finished with the Planning Sheet, please also provide that to your assigned counselor, as listed below (either by email or with your other submissions to Box).

Reference Letter Writers

- Considerations When Selecting Names

- Ideally, the final result will comprise

- Individuals who are more senior than you within the profession, if possible
 - Individuals at US organizations and individuals at non-US organizations
 - Individuals in academia and individuals who are not in academia
 - At least one 'industry' representative, if possible
 - Other individuals who have relevant information
 - Individuals who hold editorial or similar roles, who can discuss publishing or citation norms within the industry
 - Individuals within government or other organizations who can discuss 'national or international' interest in your findings or techniques (note, though, that increasingly, government agencies do not permit their members to provide such letters)

Reference Letter Writers

- ❑ Each letter (ideally) will discuss at least ONE of the following topics
 - It is NOT necessary for any given referee to talk about ALL of the elements below.
 - However, over all the letters, most of the elements listed below should be addressed by someone at least once.
- ❑ Your original contributions to the field.
 - Your findings
 - Your novel technique
 - Your theory, which may still be being proven
 - etc.
- ❑ Your publication record
 - Your publications
 - Your citations
 - The journals in which you have published
 - The publishing norms for your field (ie if citations tend to be lower in your field, etc)
- ❑ Your reputation in the field
 - Your presentations within the field
 - Your involvement in organizing or hosting professional events
 - Your peer review within the field
 - Requests for collaboration or solicitations for your guidance
 - Requests for presentations, keynote or invited talks, or other speaking events
 - Your involvement in co-advising doctoral students and why you were asked
 - Discussions, evaluations or interviews focusing by others on your work or on you - for example, confirming that others are writing about you or your work in newsletters, newspapers, popular media, blogs, videos online, etc.
- ❑ That you are a member, or have been invited to be a member, of an organization or at a membership level that requires achievements as the criteria for acceptance
- ❑ Your prizes, awards or other funding
- ❑ The national priority
 - The national or global implications of your work
 - The potential for US job creation as a result of your work
 - The societal benefits of your work
 - The national security or other defense benefits of your work
 - How your work addresses a national initiative
- ❑ Applications of Your Work
 - Interest by other (individuals, for-profit organizations, etc) in the advancement of the field in general, and why
 - Interest by other (individuals, for-profit organizations, etc) in the advancement of your work in specific, and why
 - That your work, findings, techniques, etc. are being taught to others in classrooms, textbooks, workshops or similar places of training or learning
 - That your work is being implemented, evaluated or explored for application or potential application, by for-profit companies or other researchers
 - Procedure for Developing the Letters

(example) Reference Letter Writer Planning Sheet

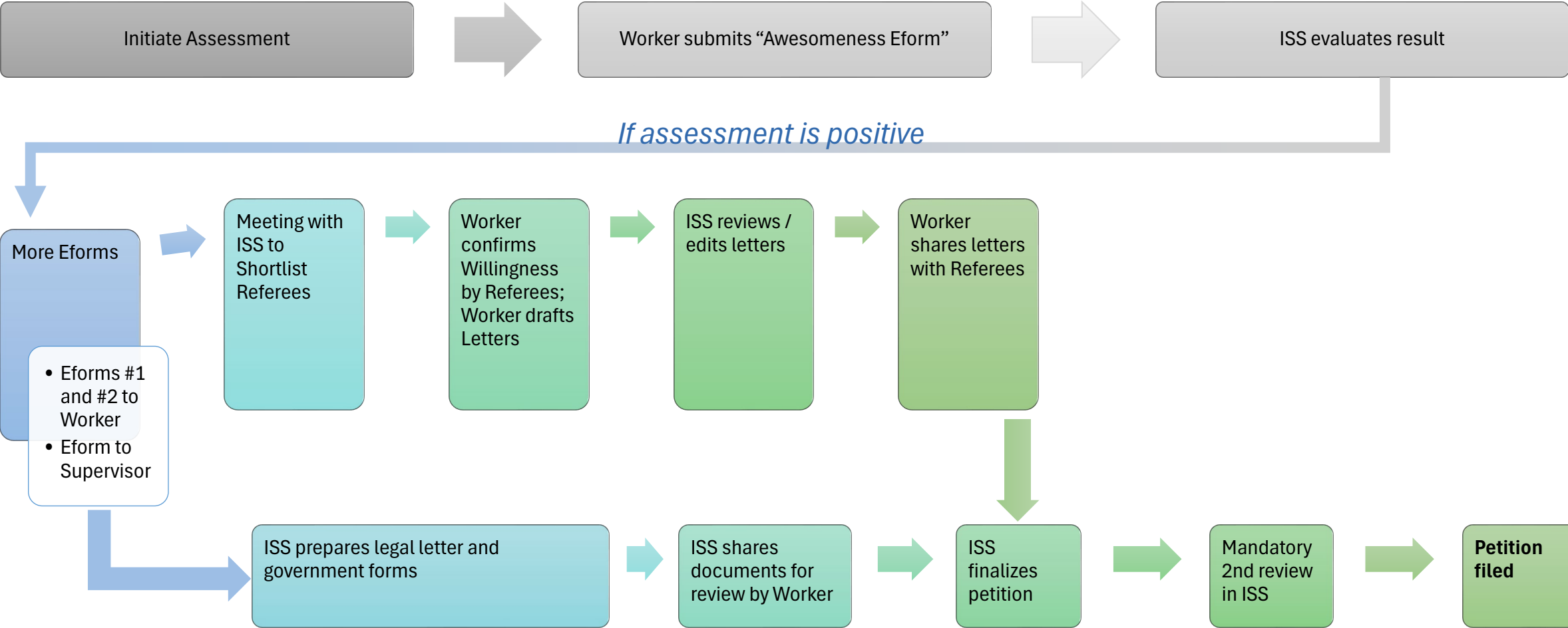
	Original Contributions	Publication Record	Reputation in the Field	Prizes, Awards or Funding	National Priority	Importance of Advancing the Field
Description	Your novel findings; Your novel technique; Your novel theory, which may still be being proven; etc.;	Your publications; Your citations; The journals in which you have published; The publishing norms for your field; The citation norms within the field, if unusual, etc.	Your reputation in the field; Your presentations within the field; Your involvement in organizing or hosting professional events; Your peer review within the field; Requests for collaboration or solicitations for your guidance; Requests for presentations, keynote or invited talks, or other speaking events; Your involvement in co-advising doctoral students and why you were asked; Discussions, evaluations or interviews focusing by others on your work or on you - for example, confirming that others are writing about you or your work in newsletters, newspapers, popular media, blogs, videos online, etc.; That you are a member, or have been invited to be a member, of an organization or at a membership level that requires achievements as the criteria for acceptance;	Certificate prizes; financial prizes or awards; grants; or similar honors	The national or global implications of your work; The potential for US job creation as a result of your work; The societal benefits of your work; The national security or other defense benefits of your work; How your work addresses a national initiative;	Interest by other (individuals, for-profit organizations, etc) in the advancement of the field in general, and why; Interest by other (individuals, for-profit organizations, etc) in the advancement of your work in specific, and why; That your work, findings, techniques, etc. are being taught to others in classrooms, textbooks, workshops or similar places of training or learning; That your work is being implemented, evaluated or explored for application or potential application, by for-profit companies or other researchers;
Name of Reference #1						
Name of Reference #2						
Name of Reference #3						
Name of Reference #4						
Name of Reference #5						
Name of Reference #6						
Name of Reference #7						
Name of Reference #8						
Name of Reference #9						
Name of Reference #10						

Do not use this image to plan your letters – use the Spreadsheet emailed to you
 This image is provided to help explain the NIW development process ahead

Testimonial Letters

- The procedure for developing the letters is as follows:
 1. Once you submit this eform, ISS will review the names and details. A meeting will be scheduled to 'shortlist' the names.
 2. You will verify with the short-listed individuals whether they will agree to provide a letter in support of your permanent residence process.
 3. ISS will identify the points or details to be included in each letter
 4. You will draft the letters and once drafted share the letter with ISS
 5. ISS will provide comments
 6. Once the letter is finalized you will share the final draft with the short-listed individual, with notes that assure the individual that they may revise and edit the letter freely. If they revise or change the letter, it should be provided to your ISS counselor before being finalized to ensure that the individual is not inadvertently including undesirable language (such as about your 'promise' within the field).
 7. In the end, ISS needs an electronic version of the letter with a signature that appears to be handwritten. DocuSign and similar digital signatures are not accepted by the government.

Workflow



Questions?

- When the NIW process is initiated, you will be assigned to a counselor. The name of the counselor will be in the email to you. Please contact that counselor for all your questions.
- If in doubt about who your counselor is, please email
 - intlscholars@purdue.edu