



CLIENT ADVISORY MEMORANDUM

Why EB1-A and EB2-NIW Applicants Should Act Now Amid Court Relief, Policy Uncertainty, and H-1B/OPT Reform Risks

Prepared by: Munashe Naphtali Mupa, LLM (U.S. Law)
Naphtali Consulting & Research LLC

Date: June 2026



SUMMARY OF THE CURRENT MOMENT

Recent developments create both opportunity and urgency for qualified professionals considering EB1-A or EB2-NIW filings. First, federal court action has pushed back against broad immigration-processing holds that affected nationals from designated countries and left many applicants in limbo. Second, a new legislative proposal seeks to restrict the H-1B pathway to permanent residence and eliminate OPT, although the proposal is reported as a long-shot. Third, USCIS continues to emphasize that adjustment of status is discretionary and that applicants should present strong equities, status compliance, and public-benefit facts when seeking a green card from inside the United States.

For qualified applicants, this does not mean panic. It means preparation. Those who can document extraordinary ability, exceptional ability, advanced-degree qualifications, nationally important work, publications, citations, awards, judging, original contributions, critical roles, or significant professional impact should consider timely EB1-A or EB2-NIW assessment and, where eligible and visa numbers are available, concurrent filing of the I-140 immigrant petition with the I-485 green card application. This is especially important for professionals whose present path depends on F-1 OPT, H-1B sponsorship, uncertain employment authorization, or nationality-based processing restrictions.

WHAT THE THREE ARTICLES SIGNAL

Development	Practical Meaning	Why It Matters for EB1-A / EB2-NIW
Judge vacates broad immigration-processing policies	A federal judge reportedly required immigration agencies to resume processing applications for nationals from nearly 40 countries after finding the halt unlawful.	This supports the message that applicants who followed the rules should not remain passive in indefinite limbo. Filing creates a record, triggers agency obligations, and preserves strategic options.
Processing holds caused real hardship	The reporting describes green-card delays, work permit disruptions, canceled ceremonies, and legally present immigrants facing risk of status complications due to agency inaction.	Applicants should document hardship, lawful compliance, professional contribution, and national-interest factors as part of any I-485 discretionary narrative.
Long-shot H-1B / OPT reform proposal	The Newsweek article reports a proposal that would end H-1B use as a green-card pathway and scrap OPT, although its prospects were described as unlikely.	Even unlikely proposals show political risk. EB1-A and EB2-NIW are independent immigrant classifications and may reduce overreliance on employer sponsorship, lottery systems, OPT, or H-1B extensions.



CORE ADVISORY POSITION

My non-legal advisory position is straightforward: eligible professionals should not wait passively for the immigration environment to become clearer. The environment may become clearer, but it may also become narrower, more expensive, more discretionary, or more delayed. Where a person already has a credible EB1-A or EB2-NIW profile, the better strategic posture is to assess eligibility early, prepare evidence thoroughly, and file while the relevant employment-based category is current and while the applicant is still in the United States with a viable basis to pursue adjustment.

This is not a promise of approval and it is not legal advice. It is a practical research and case-preparation recommendation based on the current policy direction, the court's rejection of broad processing paralysis, and the increasing political pressure surrounding F-1 OPT, H-1B, employment authorization, and green-card pathways.

WHY EB1-A AND EB2-NIW ARE STRATEGICALLY IMPORTANT NOW

- They are immigrant-petition pathways focused on the applicant's qualifications, professional record, and proposed contribution rather than a traditional employer-controlled PERM process.
- EB1-A is especially powerful for individuals with sustained acclaim, strong evidence of distinction, publications, judging, awards, critical roles, original contributions, high remuneration, media coverage, or comparable evidence.
- EB2-NIW is especially useful for advanced-degree professionals and persons of exceptional ability whose proposed endeavor has substantial merit and national importance, who are well positioned to advance it, and whose work supports waiver of the labor certification requirement.
- Both pathways can be particularly relevant for professionals in fields such as STEM, healthcare, energy, finance, accounting, analytics, education, entrepreneurship, cybersecurity, infrastructure, public health, climate resilience, and other fields connected to U.S. economic or public interests.
- Where visa numbers are available, concurrent filing may allow the applicant to submit the I-140 with the I-485, I-765, and I-131, creating a broader adjustment package and a potential route to employment authorization and travel documentation while the green-card case is pending.

WHY THE COURT DECISION MATTERS

The court decision discussed in the uploaded articles is important because it challenges the idea that agencies may freeze immigration benefits broadly based on nationality or generalized policy concerns. The article reports that the court found the processing halt unlawful and that USCIS could not attribute the hold to wrongdoing by individual applicants, but rather to country-of-origin circumstances. This matters because many qualified professionals have been caught in delays not because of deficient qualifications, but because of external policy actions, enhanced vetting, or nationality-based processing environments.

For potential EB1-A and EB2-NIW applicants, the lesson is not that approval is guaranteed. The lesson is that applicants who are eligible and well documented should create a formal record, preserve their place in the system, and avoid waiting until a new restriction, backlog, fee increase, visa retrogression, or administrative bottleneck limits their options.

WHY THE H-1B / OPT ARTICLE MATTERS EVEN IF THE BILL IS A LONG SHOT

The Newsweek article describes a legislative proposal that would prevent H-1B from serving as a route to a green card and would scrap OPT. The article itself characterizes the bill as facing long odds, which means applicants should not treat it as current law. However, the proposal remains strategically relevant because it shows where parts



of the political debate are heading: skepticism toward OPT, pressure on H-1B, higher wage thresholds, employer restrictions, and attempts to narrow employment-based migration for foreign professionals.

For F-1 students, OPT workers, STEM OPT workers, H-1B employees, and professionals waiting on employer sponsorship, the warning is clear: relying only on temporary status can be risky. EB1-A and EB2-NIW may allow qualified individuals to build a parallel immigrant strategy based on their own record and national-interest contributions rather than waiting indefinitely for an employer, a lottery, or a policy environment that may change.

CONCURRENT FILING: WHAT IT CAN DO AND WHAT IT CANNOT DO

Concurrent filing means submitting the I-140 immigrant petition together with the I-485 adjustment-of-status application where the immigrant visa category is current and the applicant otherwise meets the filing requirements. In practical terms, the applicant may also file Form I-765 for employment authorization and Form I-131 for advance parole where appropriate. This can be highly valuable because it may create a pending green-card framework while the immigrant petition is being adjudicated.

However, concurrent filing is not magic. It does not guarantee I-140 approval. It does not erase prior status violations. It does not automatically overcome discretionary concerns under the new adjustment-of-status memo. It also does not replace the need for a strong EB1-A or EB2-NIW evidentiary record. A weak petition filed quickly is still weak. The goal is not just to file fast; the goal is to file thoroughly, coherently, and strategically.

SUGGESTED APPLICANT PATHWAYS

Applicant Situation	Recommended Strategic Focus	Possible Forms / Outputs	Special Caution
F-1 / OPT / STEM OPT	Assess EB2-NIW or EB1-A early, especially where OPT delays, uncertainty, or employer dependency exist.	I-140; possible concurrent I-485/I-765/I-131 if current and eligible; extraordinary-circumstances statement where needed.	Avoid unauthorized employment and maintain clean documentation of status, SEVIS, employment, and OPT history.
H-1B professionals	Consider EB1-A or NIW as a self-driven immigrant strategy rather than relying solely on employer sponsorship.	I-140; possible concurrent I-485 package; evidence of critical role, specialized skills, publications, patents, or impact.	H-1B dual intent helps, but does not replace I-485 discretionary factors.
J-1 holders	Assess waiver issues, two-year home residency implications, and whether the professional record supports NIW/EB1-A.	I-140 planning; waiver strategy; later AOS/consular strategy depending on restrictions.	Do not ignore INA 212(e) if applicable; obtain individualized attorney review.
Nationals affected by processing holds / travel restrictions	Document why filing now is necessary and why delay, consular barriers, or nationality-based holds create unusual hardship and equities.	I-140; I-485 if eligible; discretionary equities memorandum; NIE/expedite request where warranted.	Case should be evidence-based, not merely based on nationality.
Professionals with strong publications or research	Use scholarly articles, citations, peer review, research impact, and national-interest framing to support EB1-A/NIW.	Petition support letter; exhibit list; recommendation letters; article portfolio; impact evidence.	Articles must be credible, field-relevant, and tied to the endeavor or extraordinary-ability theory.

SEPARATE SERVICE PATHWAYS: WITH ARTICLES VS. WITHOUT ARTICLES

A. Clients Who Need Scholarly Articles

For clients who need scholarly articles, the process should begin with a profile review, field analysis, and proposed-endeavor design. The article topics must not be random. They should support the petition theory by demonstrating subject-matter expertise, original thinking, national importance, and practical contribution to the United States. The



article pathway normally includes topic selection, abstract development, literature framing, article drafting support, publication-target strategy, and integration of the articles into the petition narrative and exhibit list.

- Best for applicants whose professional record is strong but would benefit from scholarly visibility, clearer thought leadership, or written evidence of expertise.
- Useful for EB2-NIW applicants who need to explain the proposed endeavor and national importance through research-oriented outputs.
- Useful for EB1-A applicants where authorship, original contribution, and field recognition can be strengthened by credible publications.

B. Clients Who Already Have Strong Articles / Publications

For clients who already have publications, the work should focus less on writing new material and more on evidence organization, petition strategy, exhibit mapping, recommendation letters, impact explanation, and legal-research-informed drafting support. The existing publications must be tied to the proposed endeavor, field importance, applicant expertise, and measurable or persuasive professional impact.

- Best for professionals with existing articles, citations, conference papers, technical reports, policy work, patents, media coverage, or peer-reviewed output.
- Focus should be on explaining why the work matters, who benefits, and how the applicant is positioned to advance it in the United States.

C. Clients Who Do Not Need Articles

Some clients may not need articles at all. A strong EB1-A or EB2-NIW case can sometimes be built on patents, awards, critical roles, judging, membership criteria, media coverage, high remuneration, entrepreneurial record, significant projects, contracts, government interest, industry adoption, or documented business impact. For these clients, the focus should be a clean evidentiary theory, strong recommendation letters, clear exhibit sequencing, and a persuasive connection between the applicant's record and U.S. benefit.

THE ROLE OF AN NIE / EXPEDITE-STYLE REQUEST

Where an applicant is affected by processing restrictions, serious employment disruption, humanitarian concerns, national-interest urgency, or a need to begin work that benefits U.S. employers, communities, patients, students, industries, or institutions, a separate National Interest Exception / expedite-style request may be useful. Such a request should not merely say, 'I want faster processing.' It should explain why the applicant's work matters, why delay harms U.S. interests, why the person is not seeking to evade the rules, and why the case deserves individualized attention.

- Strong facts may include employer need, specialized field contribution, health or safety impact, economic benefit, research continuity, educational benefit, critical infrastructure, or documented harm from agency delay.
- For affected-country applicants, the request should explain how broad holds or visa restrictions have created unusual hardship despite the applicant's compliance with immigration requirements.
- The request should be supported by evidence, not emotion alone: letters, contracts, project descriptions, publications, economic data, client need, institutional interest, or proof of delayed processing.

RECOMMENDED EVIDENCE CHECKLIST

- Complete immigration-status chronology, including entry, visa category, I-94, SEVIS/DS-2019/I-797 records, EADs, prior filings, and any gaps or concerns.



- Updated CV/resume showing all education, employment, leadership, publications, awards, memberships, judging, presentations, and critical projects.
- Degree evaluations, transcripts, professional certificates, licenses, and specialized training.
- Scholarly articles, citations, Google Scholar/ResearchGate profiles, patents, technical reports, policy papers, or media mentions.
- Recommendation letters from independent experts, employers, clients, collaborators, professors, supervisors, and industry stakeholders.
- Evidence of U.S. national interest: labor-market need, public benefit, economic value, healthcare/technology/education/energy impact, entrepreneurship, or community benefit.
- Evidence explaining why delay, travel restrictions, OPT disruption, H-1B uncertainty, consular barriers, or nationality-based processing issues create extraordinary circumstances.
- A clean discretionary equities statement showing lawful conduct, compliance, moral character, family/community ties, and benefit to the United States.

PRACTICAL ADVICE TO POTENTIAL APPLICANTS

1. Do not assume you are too early. Many strong cases fail to move because the applicant waits until status is nearly expired or the policy environment has already changed.
2. Do not file a poorly documented case. Speed is important, but credibility is more important.
3. Do not rely only on H-1B, OPT, or employer sponsorship if you may qualify for a self-petition immigrant route.
4. Do not assume the court ruling solves every problem. The government may appeal, issue new vetting guidance, or continue heightened review in other ways.
5. Do build a parallel strategy: I-140 petition strength, I-485 eligibility, employment authorization planning, travel risk planning, and extraordinary-circumstances documentation.
6. Do consult a licensed immigration attorney before filing, especially where there are prior status issues, unauthorized employment, J-1 212(e), asylum history, criminal issues, prior denials, misrepresentation concerns, or complex travel-ban effects.

BOTTOM LINE

This is a moment for disciplined action. The court decision suggests that blanket immigration-processing paralysis may not survive judicial scrutiny, but the H-1B/OPT proposal and the adjustment-of-status policy memo show that the broader immigration environment remains unsettled. Qualified professionals should use this period to assess EB1-A and EB2-NIW eligibility, strengthen their evidence, prepare articles where needed, and consider concurrent filing where legally available and strategically appropriate.

For many applicants, the most important question is no longer simply: ‘Can I wait?’ The better question is: ‘What risk do I assume if I wait while policy, visa availability, employer sponsorship, OPT, H-1B, and adjustment discretion continue to shift?’

SOURCES CONSIDERED

- Newsweek, “Republican Launches Long-shot Bid to End H-1B Visa Green Card Pathway,” published June 5, 2026.
- The Hill, “Judge blocks series of Trump policies halting immigration processing,” published June 5, 2026. Two uploaded copies appear to report the same core development.
- USCIS, “Concurrent Filing of Form I-485,” explaining that Form I-485 may be filed with or after an immigrant visa petition while the petition remains pending, if other requirements are met.



- USCIS Policy Memorandum PM-602-0199, “Adjustment of Status is a Matter of Discretion and Administrative Grace...” dated May 21, 2026.
- Reuters/AP reporting on the June 5, 2026 federal court decision invalidating USCIS policies affecting nationals from 39 countries.

IMPORTANT NON-LEGAL SERVICES DISCLAIMER

This memorandum is prepared by Munashe Naphtali Mupa / Naphtali Consulting & Research LLC for general informational, research, educational, and petition-support discussion purposes only. It does not constitute legal advice, legal representation, or the practice of law. No attorney-client relationship is created by reading this memorandum or requesting research, drafting, article preparation, clerical support, or petition-support services. Immigration law is fact-specific and rapidly changing. Potential applicants should consult a licensed U.S. immigration attorney for legal advice before filing any immigration petition, adjustment-of-status application, work authorization request, travel document request, or related submission.

Prepared by Munashe Naphtali Mupa, LLM (U.S. Law)

Naphtali Consulting & Research LLC

Email: mnmpupa@naphtaliconsulting.com | Phone: +1-617-586-5546 | Website: naphtaliconsulting.com