

EB2 National Interest Waiver (NIW) Program for Pilots: Two and a Half Years and 200 Approvals Later

This article aims to step back and reflect on the EB2 NIW Program for Pilots and you will also find below our latest press review on the Pilot's shortage in the United States (US). To date, this program has already changed the lives of around 200 pilots and 600 of their family members. Thanks to the successful applications of these pilots, entire families have been able to move to the US. The pilots themselves have benefited from better career prospects and improved salaries, while their families have gained access to top-notch education for their children, job opportunities for their spouses, and an overall enhanced quality of life. We have come a long way since our first applications were filed, and we are happy to be able to continue to offer this unique opportunity to experienced pilots.

Shaping the Global Immigration Landscape

Three years ago, amidst the height of COVID-19, Harvey Law Group (HLG)'s management was brainstorming new opportunities that could be offered to grounded pilots. The US pilot shortage was already a major issue hitting the headlines on a weekly basis, and we felt that something had to be done.

After detailed legal analysis and lengthy internal discussions, Mr. Jean-Francois HARVEY, Global Managing Partner and Founder, decided that the time was right to launch the EB2 NIW Program for Experienced Pilots. Our first EB2 NIW applications were submitted in early 2022.

EB2 NIW Program for Experienced Pilots in a Nutshell

The EB2 NIW Program for Experienced Pilots is a life-changing opportunity. This program enables pilots and their family members to receive unconditional green cards, allowing them to live and work in the US as permanent residents. Another important feature of the program is that time spent in the US as a green card holder will count towards the 5-year residency

requirement for US citizenship. This program is not just about the pilots, it is also about the opportunities they give to their spouses, children, and future generations.

In recent months, we have observed a slowdown in the hiring spree of major US airlines. However, the pilot shortage remains, and we can expect the press to highlight this issue again as national holidays and busy travel periods approach, particularly Thanksgiving, Christmas, and New Year. The reality is that routes are still being cut and planes are still being grounded.

Pilots who have been approved recently generally do not ask us to delay the process further. If they do not secure employment at a major airline right away, they tend to prefer to secure a position at a regional US carrier for the time being, so that they be ready to sit the next round of interviews, even at short notice.

Holding a US Green Card is a powerful tool for a pilot's career development, as US airlines rarely offer jobs or even interviews to pilots who do not already have authorization to work in the US.

The EB2 is an employment-based immigration program, designed for professionals holding advanced degrees or possessing exceptional ability. The NIW category of the EB2 waives the job offer requirement and the subsequent US labor certification, on the basis that having this individual in the US is in the national interest. Successful applicants can therefore seek work and change employers without worrying about their work permits—unlike other employment-based visas such as the O-1, L-1, or H-1B, which tie the pilot to a specific employer. Instead, the NIW application is anchored on the pilot's professional background, not on a lottery system, and does not require the pilot to make any financial investments like those required by the E2 or EB5 programs.

Not being tied to a specific employer, and not having to make financial investments worth several hundreds of thousands of dollars, are unique advantages that no other program replicates.

To qualify for the EB2 NIW Program, applicants must demonstrate (1) possession of an



An International Law Firm with Lawyers that are:

Registered with the Quebec Bar, the Law Society of Ontario & the Law Society of British Columbia in Canada
Registered with the New York State Bar & the District of Columbia Bar in the United States of America
Registered with the Bar Association of the Kingdom of Cambodia
Registered Foreign Lawyers with the Law Society of Hong Kong
Registered with the Law Society in England and Wales
Registered with the Paris Court of Appeal in France
Registered with the Justice Ministry of Vietnam
Registered with the Grenada Bar Association
www.harveylawcorporation.com

advanced degree or exceptional ability; (2) the substantial merit and national importance of the endeavor; (3) being well-positioned to carry out the endeavor; and (4) that, on balance, it is in the interest of the US to waive the labor certification usually required.

Upon a successful application, the applicant and their accompanying dependents (spouse and dependent children under 21 years old) would receive separate unconditional green cards valid for 10 years (and renewable).

EB2 NIW Program Complexities

a) Evaluation Criteria

The EB2 NIW program is complex. While some criteria are objective, others are subjective. The legal framework is broad, and unfortunately, USCIS has no precise guidelines to offer, thereby keeping some flexibility to widen or narrow down approvals largely at the USCIS officer's discretion. We have had to adapt many times to navigate through its intricacies.

b) Processing Time

The processing time is not equal for all. We have seen some applications processed in under 12 months from submission to green card; and others taking over twice as long.

From our experience, a reasonable timeframe to expect is approximately 18 months (composed of Stage 1 - 6 to 9 months to obtain the NIW, and Stage 2 – 6 to 9 months to obtain the immigrant visa).

To expedite Stage 1, USCIS offers the option (subject to a fee) to apply for Premium Processing, which guarantees a response within 45 days of each communication. This can be triggered at any time within the process. Clients should talk to their lawyers about this. This option is not as simple as it looks and may or may not be advisable depending on the client's objective, age of dependent children, recent USCIS behavior upon receiving premium processing applications, priority dates, etc.

We have recently observed longer processing times from USCIS compared to when we started offering the program. We suspect this is due to an increase in the number of applicants for the EB2 worldwide. One indicator of this is USCIS's implementation of a queuing system (through Priority Dates) for all EB2 applicants, which was not in effect initially.

As of today (October 2024), even if the NIW has been approved (Stage 1), the consulate interview required to conclude Stage 2 cannot be scheduled unless the date the pilot's initial petition was filed (i.e. the "Priority Date") is current. As of today, the relevant date is March 15, 2023. This date can be adjusted forward or backward at USCIS's discretion to suit their internal needs and constraints.

The lengthening of the processing time at the USCIS level and the queuing system that has been put in place are a reflection of the success of the EB2 NIW program. As more pilots have gone through the process, we are pleased to see consulates are becoming more used to these applications and now offer interviews quicker than before. The processing times at consulates may vary greatly, but at HLG, we have a global reach, serving pilots all over the world, and therefore can often advise on and compare the process at different consulates.

Changes and Lessons Learned Since 2022

Over the past two and a half years, we have tried to identify some key indicators that could lead to approvals, but this exercise has shown that there is no template 'ideal pilot' candidate. Instead, we believe that whilst a poor petition will result in a denial, a good petition may not necessarily result in approval, regardless of the pilot's rank, experience, nationality, or if they hold an FAA license.

Upon submission of an application, at times USCIS can issue a Request for Further Evidence (RFE) letter or a Notice of Intent to Deny (NOID) letter. Receiving an RFE or NOID can indicate that the officer may not be inclined to approve the petition. Nevertheless, we advise providing thorough responses regardless in keeping with our 'no stone unturned' mentality. As a result, we are proud to inform that despite the odds we have had multiple approvals after RFE and even

NOID responses.

Despite the limited time given by USCIS to respond to RFE and NOID letters, we have learned that a denial is not the end of the road. Pilots who have been denied on one EB2 NIW petition can opt to refile with a new petition, hoping for a more welcoming officer the second time around. We are pleased to confirm that multiple successful refilings have demonstrated that an officer is not bound to follow the previous officers' decision and that a denial is not necessarily the end of the road.

The EB2 NIW Program Remains the Best Choice for Pilots Seeking US Permanent Residency

Maintaining this program has been extremely demanding on our team. We have had to adapt and adjust to changes in the industry numerous times and put clear and flexible internal processes in place to ensure consistency and quality. It is clear that the EB2 NIW does not come with a precise rule book, and so we have had to continue to learn to keep ourselves at a top level of knowledge and maintain readiness to deal with difficult RFEs and NOID letters.

Despite this, we do believe that the EB2 program remains the best choice for pilots seeking to obtain permanent residency in the US and we will continue to offer this program to those who qualify.

This program allows pilots the freedom of mobility between US employers and the longevity and pathway to US citizenship which is not afforded by other programs.

Conclusion

As with pioneering any field, taking an innovative and daring approach in the immigration industry is not comfortable. It is far easier to simply offer well and long-established immigration by investment programs. However, it is a distinctive trait of HLG to take pride in actively shaping the global immigration landscape, leaving no stone unturned for the benefit of our clients.

Two and a half years later, we have around 200 EB2 NIW approvals, with more incoming. These

approvals are a testament to the quality of our legal reasoning and diligence, as they include pilots from various backgrounds, including commercial airline pilots, business jet pilots, military pilots, and even helicopter pilots. We are proud to have paved the way for competitors to follow in our footsteps, as even those who were initially reluctant are now trying to provide this service.

With the experience we have gained and the positive results we have obtained, HLG has expanded the NIW route to qualified individuals in other professions, including in STEM fields, distinguished entrepreneurs, business management personnel, acclaimed persons in the arts, and others.

The “NIW” team at Harvey Law Group

Press Review

1. Katie Ann McCarver, '[Commercial Pilot Shortage Opens Flight Paths To Opportunity](#)', Las Vegas Sun, 5 May 2024
 - Early retirements, federal training requirements, and an aging workforce quickly approaching retirement have created a pilot shortage of nearly 17,000 openings, according to the U.S. Bureau of Labor Statistics.
 - Airlines like Allegiant have enhanced their partnerships with flight schools and mentorship programs. There is still concern whether these steps will fill the gaps.
2. Sheryl Barden, '[AINsight: Quality, Not Quantity, Defines Pilot Shortage](#)', Aviation International News, 16 August 2024
 - A considerable lack of qualified pilots is one of the main contributors to the pilot shortage. Many new graduates of flight schools are unprepared for industry demands and standards.
 - Although new pilots are entering the workforce, many do not meet the extensive experience and qualifications many airlines seek. This lack creates further issues since young pilots are lacking in proper mentorship opportunities.
3. '[Global Pilot Shortage Leads To Widespread Flight Cancellations In Summer 2024](#)', Mighty Travels, 31 August 2024

- Several summer flight schedules were significantly reduced due to pilot shortages, resulting in cancellations and delays, especially in regional airports. Some reported nearly 76% service reductions due to inadequate staffing.
 - In response to the shortage, many airlines have attempted to grow their workforces through enhanced recruitment efforts. However, customers can expect further service reductions if the gap cannot be filled.
4. Janelle Tanguma, '[Local Flight Academies Discuss National Pilot Shortage](#)', KTSM, 14 August 2024
- The national pilot shortage has made many flight academies, such as McAllen Flight Academy, partner with local high schools to train students for their private pilot licences to help meet the demand created by the pandemic.
 - Some flight schools have lowered costs to meet this demand, seeing the urgent need for new pilots to enter the workforce.
5. David Shepardson, '[U.S. Flight Delays: Are They The Airlines Fault? Or The FAA's?](#)', Reuters, 22 May 2024
- Airlines for America, which includes (American Airlines, Delta, United, and Southwest) are calling for the government to address the shortage of air traffic controllers. On top of the shortages of pilots and mechanics, the shortage of air traffic controllers will only create further frustrations for travellers, especially during peak season.
 - The FAA claims it is actively hiring staff but is seeking \$43 million, hoping that extra funding will expedite the hiring and training processes.
6. Jonathan Welsh, '[Collaborating To Fill Maintenance Gap](#)', AOPA, 13 August 2024
- The aviation industry is struggling to attract new workers to fill the roles of retiring airline maintenance workers. Current projections by the research company Oliver Wyman have stated that airline maintenance workers' shortage could reach 27 percent, or roughly 48,000 workers, by 2027.
 - These shortages directly affect the waiting times for repairs and maintenance on current aircraft. With the current shortage of aircraft, this has only led to further delays and frustrations for travellers.
7. Evan Beebe, '[Air Force Strategies To Reduce Its Ongoing Pilot Shortage](#)', IDGA, 10 July 2024

- The U.S. aviation industry faces a significant pilot shortage, estimating a need for 5,400 pilots by 2032. FAA retirement policies primarily drive this need, as well as the rising cost of flight schools and limited training resources.
 - These factors are exasperated by gaps created by retiring pilots, difficulties finding qualified trainers, and outdated training equipment. The U.S. Air Force has had to adjust its programs, such as retention bonuses and new training programs, to compensate for the shortage.
8. Jonathan Lehrfeld, '[Personnel Shortages May Force US Air Force Pilots To Fly Non-Fighters](#)', Defense News, 16 September 2024
- Due to a shortage of 1848 pilots, the U.S. Air Force implemented a new policy which disrupts the traditional assignments for T-38 Talon pilots and assign them to non-fighters or bombers to fill these positions.
 - This policy allows T-38 graduates to indicate preferences for any aircraft while retaining the option to switch to other roles as capacity allows.
9. Ryan Ewing, '[Congress Shells Out Millions To Aid Pilot Shortage](#)', FLYING, 3 June 2024
- Congress has increased funding to aid in developing the pilot workforce. The FAA Reauthorization Act will see that \$80 million over four years will help train new airline technicians. This is on top of the \$240 million allocated to this project.
 - Many airlines continue to see shortages in staff, especially in airline mechanics. The hope is this initiative will help bolster diversity and inclusion in aviation.
10. '[Labor-Backed FAA Bill Is Victory For Workers Across Aviation Industry](#)', U.S Senate Committee on Commerce, Science, & Transportation, 8 May 2024
- There is strong support from America's aviation workforce, including unions and worker groups, for the bipartisan FAA Reauthorization Act (H.R. 3935), which emphasizes labour rights, safety improvements, and workforce growth.
 - The legislation hopes to address critical staffing shortages, particularly among air traffic controllers, enhance hiring and training for safety inspectors and maintenance workers, increase funding for workforce development, and include measures to improve safety protocols and support underrepresented groups in aviation, such as women and veterans.



An International Law Firm with Lawyers that are:

Registered with the Quebec Bar, the Law Society of Ontario & the Law Society of British Columbia in Canada
Registered with the New York State Bar & the District of Columbia Bar in the United States of America
Registered with the Bar Association of the Kingdom of Cambodia
Registered Foreign Lawyers with the Law Society of Hong Kong
Registered with the Law Society in England and Wales
Registered with the Paris Court of Appeal in France
Registered with the Justice Ministry of Vietnam
Registered with the Grenada Bar Association
www.harveylawcorporation.com

Disclaimer

The material contained in this Publication is solely intended to inform readers of general legal information and/or developments. It is not intended, and should not be relied upon, as a legal or other professional advice or an opinion of any kind. Harvey Law Group ("HLG") is not liable and in any way responsible for any harm or damages resulting from the use of the information contained on this Publication for legal or any other purposes. All rights reserved.