



USING U.S. IMMIGRATION LAW TO UNDERMINE PUTIN

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Since Russia's invasion of Ukraine in late February 2022, there has rightly been much discussion of how to assist the Ukraine and its citizens. The United States' immigration laws can plainly be employed to assist Ukrainian nationals who wish to seek refuge in the United States, including [extending](#) Temporary Protected Status for them. However, immigration can serve another important function, as well. One can harness immigration avenues that are already open to Russian citizens to welcome Russia's "best and brightest" to the United States, thereby undermining Putin's tyrannical regime. While immigration attorneys and advocates may not be able help courageous Ukrainians in the battlefield, we can help their cause by using our immigration law expertise in creatively finding pathways for Russians opposing Putin to come to the US.

In recent weeks, Putin has cracked down on those within the country who object to the war, [targeting journalists](#) who even refer to the operations in Ukraine as a "war" or "conflict". Many educated Russians who oppose the war have been forced to leave the country out of fear of arrest or worse. With more and more companies and institutions withdrawing from Russia, many also find themselves concerned about the future of their career and ability to earn a living. Along with journalists, bloggers, and activists, I.T. professionals and other creatives have been [leaving Russia in droves](#) since the onset of the war.

Offering Russian nationals who oppose the war a safe harbor is a worthy objective in and of itself, but attracting Russian talent to the United States can serve another goal as well – undermining the Kremlin's power and influence. The United States would undoubtedly benefit from an influx of Russian scientists, researchers, I.T. professionals and other skilled workers, and the

Russian military and economy would suffer from the loss of this talent. Offering Russian nationals a [streamlined process](#) for immigration to the United States, as well as connecting them to employers and universities in the country, would assist in attracting top talent.

In the current absence of targeted programs for fleeing Russians, however, existing immigration options can help fleeing Russian national who wish to relocate to the United States. Russian nationals of extraordinary ability in the sciences, arts, education, business, or athletics may be eligible for an employment-based, first-preference visa. In order to obtain an [EB-1 visa](#), one must provide evidence of a one-time achievement of major, internationally-recognized award on the level of an Oscar or Pulitzer Prize, or meet 3 of the following 10 criteria:

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
- Evidence of your membership in associations in the field which demand outstanding achievement of their members
- Evidence of published material about you in professional or major trade publications or other major media
- Evidence that you have been asked to judge the work of others, either individually or on a panel
- Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
- Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
- Evidence that your work has been displayed at artistic exhibitions or showcases
- Evidence of your performance of a leading or critical role in distinguished organizations
- Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
- Evidence of your commercial successes in the performing arts

A noncitizen of extraordinary ability must also be able to demonstrate that she intends to continue working in her area of expertise. Importantly, no offer of employment or labor certification is required for an EB-1 visa.

Similarly, highly talented Russian nationals could consider applying for an O-1

visa, the nonimmigrant parallel to an EB-1 visa, as the O-1 visa can be effectuated more rapidly. Individuals with an extraordinary ability in the sciences, education, business, or athletics may be eligible for an O-1A visa, while those with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry may be eligible for an O-1B visa. A U.S. employer must file an O-1 petition on behalf of a foreign national of extraordinary ability, and must demonstrate that the beneficiary meets the relevant [criteria](#). There are other visa options under immigration law, such as the H-1B visas and permanent residency in the employment and family based categories, although we have highlighted two that would be applicable to the “best and brightest.”

Finally, Russian nationals who have publicly expressed opposition to the war, or even reported on it, may also be eligible for asylum in the United States. Russia has already [opened cases](#), both administrative and criminal, against people who have protested or written about the war. As noted, on March 4, 2022 Russia enacted two laws, adopted and brought into force on March 4, that criminalize independent war reporting and protesting the war, with penalties of up to 15 years in prison. The laws make it illegal to spread “fake news” about the Russian armed forces, to call for an end to their deployment and to support sanctions against Russian targets. On March 23, 2022, Russia’s Parliament [adopted amendments](#) effectively expanding the ban on criticizing the armed forces to banning criticism of all Russian government actions abroad. Individuals who have a well-founded fear of persecution based on past persecution or a risk of future persecution due to their race, religion, nationality, membership in a particular social group, or political opinion may be eligible for asylum. They must be in the US or must be apply at a land border post or port of entry. If they come in through Mexico and apply at the Southern Border, they will be subject to Title 42 that has been used by both the Trump and Biden administrations to block asylum seekers out of fear that they will bring Covid-19 into the US. The Biden administration has exempted Ukrainians from Title 42 on a case by case basis, but Russians will be subject to Title 42. Given the Putin regime’s recent increased sanctions on those who even discuss the war against Ukraine, Russian nationals who have openly opposed the invasion could potentially have a viable political opinion-based asylum claim.

The Biden administration has recently [announced](#) that the United States will accept up to 100,000 Ukrainian refugees, but U.S. immigration policy assist the

victims of Russia's invasion of the Ukraine in another way, also. By attracting highly skilled Russian nationals who oppose the war, the United States can both drain the Kremlin of key talent and shelter civilians who face danger in Russia through the effective deployment of US immigration policy. As the atrocities committed by Putin increase by the day, Russian nationals themselves, and the United States' reception of these individuals, may be a key to achieving peace.

(This blog is for informational purposes and should not be viewed as a substitute for legal advice).

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