Employment-Based Permanent Residency

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Session Goals

- What is Lawful Permanent Residency?
- Employment-Based Permanent Residency Categories
- IC process for Employment-Based Permanent Residency applications
- Retained Counsel Program

Lawful Permanent Resident, Immigrant, Green Card holder, etc.
Indefinite work eligibility, expedited travel
Card usually valid for 10 years (renewable), does not affect underlying status

To sponsor an individual for permanent residency, the position offered must be a permanent position, i.e. one that is not time-limited
To USCIS, “permanent” means either tenured, tenure-track, or for a term of indefinite or unlimited duration and in which the employee will normally have an expectation of continued employment
- Positions that are annually renewed may qualify
- Postdoctoral Fellows/Medical Residents typically do not qualify

Usually a 3 step process
1. Labor Certification (aka: PERM); Department of Labor
2. Immigrant Petition (I-140); U.S. Citizenship and Immigration Services (USCIS)
3. Adjustment of Status (AOS); USCIS or Consular Processing; Consulate

However: certain categories do NOT require PERM
Relevant Employment Based Preference Categories

- EB-1a: Aliens with Extraordinary Ability*
- EB-1b: Outstanding Professors and Researchers
- EB-2a: Members of the Professions Holding Advanced Degrees
- EB-3a: Professionals and Skilled Workers

* does not require employer sponsorship

Commonly Used EB-Categories at U-M

- Outstanding Professors and Researchers
  - No PERM
- Members of the Professions Holding Advanced Degrees - position must require at least Master’s degree or higher
  - Normally requires standard PERM, unless:
    - Special Handling - PERM, but abbreviated process
      Teaching Faculty only
    - National Interest Waiver* - No PERM
      - Does not require employer sponsorship
- Professionals - position must require at least Bachelor’s degree
  - Requires standard PERM

Special Handling

- College/University teaching positions only
- Competitive recruitment effort (most qualified standard)
- At least one PRINT ad in a professional journal OR electronic ad (30 day posting) in a national professional journal
- Must file ETA 9089 within 18 months from the date on the letter of offer

SH Ad Requirements

- Job title (one or more title or all ranks considered depending upon qualifications)
- Duties (including teaching)
- Minimum requirements
  - Degree (ABD)
  - Experience or Training (if any)

SH Process

- Prevailing wage determination
- Internal Posting (10 business days)
  - Must be less than 180 days old but over 30 when ETA filed.
- Recruitment Report:
  - Statement of foreign national’s qualifications
  - Report listing applicants and why foreign national was more qualified than each

SH - Pros and Cons

Pros
- Candidate must be shown to be the most qualified for the position vs. minimally qualified
- Less likely to be selected for audit
- Print ad or electronic ad (posted for 30 days)
- Processed by the IC

Cons
- Labor certification can be lengthy process
- Relatively short window of opportunity to file
What if I Miss the 18 month Deadline?

- **Re-Selection (under SH)**
  - Department conducts a new recruitment/selection process to once more come within 18 month deadline
  - Foreign national who is already working at U-M reapply for the position and is chosen anew if most qualified applicant
  - Process is specifically allowed. It should not pose HR issue

- **Other PR application procedures? If eligible**

IC Process

- **Permanent Residency cases processed in INSZoom**
- **Questionnaires**

IC Process Details

- **PR Questionnaire**
  - Speaker recruitment and documentation procedures for college and university recruiters
  - May be a print or electronic ad. Tear sheet required.
  - May include ad in local newspaper where the advertisement was placed
  - Itemized list of all expenditure and expenditures associated with the advertisement
  - Additional facts not captured
  - Provide specific information on the chosen candidate and those not selected

- **PR Documents**
  - Full resume just maintained by the department

First Stage

- **Labor Certification**
  - Recruitment - Cost of advertisement
  - IC fee - $1,825 (1st and 2nd Stages)
  - File ETA 9089 - currently no fee
  - Estimated IC processing time of 90 days
  - DOL processing time varies (currently 5 months)
  - Random audits can add months or even years onto the process

Second Stage

- **File Immigrant Petition (I-140)**
- **Filing fee of $580**
- **Estimated IC processing time of 15 days**
- **Form signed by Dean, Director, or Department Chair**
- **Supporting documentation including certified ETA 9089**
- **Processing time of approximately 6 months (premium processing limited to certain situations)**
Retained Counsel files the last stage (I-485, Adjustment of Status)
- Specialist processing the case will give instructions as to when a Retained Counsel Request form should be faxed to the IC.

Application for Adjustment of Status to Permanent Resident
- $1500 principal (attorney fee)
- $1070 I-485 filing fee and biometric fee
- Application made by employee and family members
- Demonstrate there isn't a reason they should NOT be a permanent resident
  - Includes medical test, biometrics, security clearance, interview (occasionally); or
- Apply at USCIS Service Center or U.S. consulate in home country

EB-2
- Regular Labor Certifications for those positions requiring advanced degrees (Master's or higher)
  - Employee can have equivalent Bachelors plus 5 years progressive work experience)
- EB-3
- Regular Labor Certifications for those positions requiring a Bachelor's degree

EB1- Outstanding Prof/Res
- International Reputation as outstanding in an academic field
- 3 years of teaching and/or research experience
- Offer of employment for tenured or tenure-track position or permanent research position.

NO LABOR CERTIFICATION REQUIRED

PERM Requirements
- Offer of a permanent, full-time position
- Prevailing wage requirement (only through the National Prevailing Wage Center- unlike H-1Bs)
- Recruitment
  - Must show that there are no
    - Regular PERM: willing, able and minimally qualified US Citizen or Permanent Resident candidates
  - Special Handling: willing, able and better qualified US Citizen or Permanent Resident candidates

Documentation Requirements - OPR
MUST document at least two of the following:
1. Receipt of major prizes/awards in the academic field
2. Membership in Associations in the academic field which require outstanding achievements of their members.
3. Published material in professional publications written by others about the scholar’s work in the academic field.
4. Judge of the work of others, either individually or on a panel, in the same or an allied academic field.
5. Original scientific or scholarly research contributions to the academic field
6. Authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.
OPR – Pros and Cons

**Pros**
- Labor Certification not required

**Cons**
- Interpretive evidence and concrete evidence
- Must have three years in the field (typically post-degree)
- Definition of “permanent” for research position varies
- Standard for approval is somewhat high

Case Processing

**Who files Regular PERM cases and OPR?**
- IC two year pilot program to handle basic PERM applications for Research Faculty (Research Professor and Research Scientist tracks)
- Retained Counsel-all non-Research Faculty and OPR cases

IC Process

**Submit Permanent Residency Authorization form**
- Regular PERM contingent upon FSIS caseload
- Final stage I-485 still referred to Retained Counsel

Retained Counsel Process

**Request Form faxed to IC**
- IC sends to selected counsel (if not indicated on form, one will be assigned)
  - Vicky Farah at Law Offices of Afaf Vicky Farah
  - Dawn Wise at Irani and Wise, PLC
- Selected attorney should contact you within 3 business days to set up a meeting with all involved parties

Retained Counsel

**Even if the foreign national decides to self-petition (e.g. NIW or family based), the process must still go through retained counsel if the Department pays for the petition.**

**IC Case Management fee is $100**

Benefits of Pending PR

Along with the I-485(s), the applicant(s) may file
- I-765, Application for Employment Authorization
- I-131, Application for Travel Document (AP)
Department Cost

- The hiring unit is responsible for paying the legal fees and filing fees associated with the primary beneficiary. The foreign national may pay dependent and visa related fees. See: http://www.internationalcenter.umich.edu/immig/forms/empvisafees.pdf

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Green Card filed by Retained Counsel

- Basic Labor Certification (positions w/o teaching duties)
- EB-1b (OPR) Retained Counsel $4,500 + hourly rate for substantive Request for Evidence (RFE) or ALC appeal
- IC case management fee: $100
- I-140: $580
- I-485: $985
- Biometrics: $85
- Total: $1,650

$6,250 plus the cost of recruitment, if applicable (The cost of the recruitment will vary and will largely depend on the advertising options used.)

Medical Exams and Vaccinations

- Pictures AOS: $500/adult dependent
- AOS: $350/minor under 14 years
- AOS complications

Filing Dates

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Final Action Dates

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Advantages

- Filing dates can be much earlier than adjudication dates
  - Employee and family members can apply for EAD (work authorization) and Advance Parole for travel
  - Employee can change employers after I-485 pending for 180 days

USCIS FINAL WORD

- After DOS releases each month’s visa bulletin USCIS will approve use of Filing Visa Applications chart or instruct users to use the Application Final Action Dates.
- Attorneys will monitor both DOS and USCIS websites and will file I-485 when appropriate.

http://www.uscis.gov/visабulletininfo
The Good News: AC-21

- If the foreign national is the beneficiary of a labor certification (or an I-140 petition) filed before end of 5th year H-1B status, s/he may receive a **one-year H-1B** extension.

- If the foreign national is the beneficiary of an approved I-140 petition, with a priority date that is not current according to the DOS visa bulletin, s/he may receive a **three-year H-1B** extension.

Who Leads the Process

- Department decides whether to sponsor, which attorney to work with, and may withdraw at any point in the process

- IC and Attorney consults with department to decide the appropriate employment based category; IC has final authority

- More than one immigrant petition may be filed, but this is generally of limited advantage to the department

Contact Information

- [http://www.internationalcenter.umich.edu/](http://www.internationalcenter.umich.edu/)
- ICfacultystaff@umich.edu
- 763-4081 (FSIS main line)
- 515 E. Jefferson Street (1316)
  - 1500 Student Activities Building