

ACU Guidelines

Sponsoring Applications for Legal Permanent Resident Status

Effective Date: May 2012
Last Reviewed: May 2018

I. Introduction

According to the U.S. State Department an immigrant is a foreign national who has been authorized to live and work permanently in the United States. If an ACU staff/faculty member wishes to become a legal permanent resident (immigrant) he/she must go through a multi-step process in conjunction with the hiring department and with the Office of General Counsel.

II. Categories for Legal Permanent Residency

This document will focus exclusively on “immigration through employment” hereafter referred to as the “employment path” as specified by the United States Citizenship and Immigration Services (USCIS). The following employment categories are most applicable to academic institutions.

- 1) EB-1 Priority workers
 - a) Foreign nationals of extraordinary ability in the sciences, arts, education, business or athletics
 - b) Foreign national that are outstanding professors or researchers
- 2) EB-2 Professionals with advanced degrees or persons with exceptional ability
 - a) Foreign nationals of exceptional ability in the sciences, arts or business
 - b) Foreign nationals that are advanced degree professionals
 - c) Qualified alien physicians who will practice medicine in an area of the U.S. which is underserved. Read more about this particular program.
- 3) EB-3 Skilled or professional workers
 - a) Foreign national professionals with bachelor's degrees (not qualifying for a higher preference category)
 - b) Foreign national skilled workers (minimum two years training and experience)
 - c) Foreign national unskilled workers

III. Procedures for Obtaining Legal Permanent Residency

1. The Office of General Counsel, with the University’s designated immigration attorney, will determine if the prospective staff/faculty member (foreign national) is eligible for lawful permanent residency under the employment path to lawful permanent residency.
2. Most employment categories require that the U.S. employer – ACU in this case, complete a labor certification application request (Form ETA 9089) for the applicant, and submit it electronically to the Department of Labor’s (DOL) Employment and Training Administration (ETA).
 - a. ACU will develop the documentation needed to demonstrate that there are no qualified U.S. workers (defined as U.S. Citizens or U.S. lawful permanent residents) suitable for the position. This documentation will include the job title, work schedule, wages, job duties, the education, training, & experience required to perform the job, information on supervisors, and other special requirements
 - b. In the case of Professors, ACU will develop the documentation needed to demonstrate that the Professor was selected through a competitive recruitment process within the immediate 18-month period and was considered the most

- appropriate candidate for the position (this process is known as “Special Handling” and is discussed in greater detail at the end of this document).
- c. The Office of General Counsel, working with the University’s immigration attorney, will then file the labor certification request and the supporting documentation with the DOL.
3. Upon approval of Form ETA 9089, the USCIS must approve an immigrant visa petition, Form I-140, Petition for Alien Worker, for the person wishing to immigrate to the United States:
 - a. University’s attorney files Form I-140 on behalf of the applicant;
 - b. University’s attorney will compile the package that includes the certified labor certification request, Form I-140, education & experience evaluation & documents, training certificates, professional memberships, resume, employment agreement and ACU letters of support for the applicant.
 - c. In Extraordinary Ability and Outstanding Researcher/Professor cases (also discussed in more detail at the end of this document), Form I-140 may be submitted without the need for prior submission or approval of Form ETA 9089 with the U.S. DOL.
 4. If the I-140 is approved, the USCIS will send the Approval Notice (Form I-797) to the attorney or applicant.
 - a. The State Department must give the applicant an immigrant visa number, even if the applicant is already in the United States.
 - b. When the applicant receives an immigrant visa number, it means that an immigrant visa has been assigned to the applicant.
 5. Applicants must complete the I-485 Form “Application to Register Permanent Residence or to Adjust Status”. The following documents are typically submitted as part of the I-485 package for employment-based applications:
 - a. I-485, Application to Register Permanent Residence or to Adjust Status
 - b. G-325A, Biographic Information
 - c. Copy of the I-797, Notice of Action, showing that the I-140, Immigrant Petition for Alien Worker, has been received or approved by INS (As of July 31, 2002, an interim rule was published in the Federal Register allows for concurrent filing of Form I-485 with Form I-140, if a visa number is immediately available.
 - d. I-693, Medical Examination of Aliens Seeking Adjustment of Status
 - e. G-28, Notice of Entry of Appearance as Attorney or Representative (if an applicant has a lawyer - Optional)
 - f. I-765, Application for Employment Authorization, if an applicant wants to work while the application is processed (Optional)
 - g. I-131, Application for Travel Document, if an applicant needs to travel outside the United States while the application is processed (Optional)
 - h. I-485 Supplement A, and penalty fee if applicable. See 8 CFR 245.10 (Optional)

- i. I-601, Application for Waiver of Grounds of Excludability, if applicable (Optional)

III. Costs and Fees

ACU will assist the applicant with documentation to support the application process with the assistance of the University's designated immigration attorney. The hiring department of the University will also normally bear the following fees: applicable legal and advertising costs associated with the preparation and filing of the Labor Certification Application with the U.S. DOL and the legal fees and costs associated with the preparation and filing of the I-140 Immigrant Visa Petition with the USCIS. The employee is typically responsible for all legal fees, USCIS filing fees, expedited processing fees, and other related expenses associated with the preparation and filing of the I-485 Application to Adjust Status.

Disclaimer:

The information contained in this handout is intended for the general, informational use by members of the ACU Community and may not be construed as legal advice.

EB-1 Eligibility and Filing

Aliens with extraordinary ability are those with "extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation." You must be one of "that small percentage who have risen to the very top of the field of endeavor," to be granted this classification. For example, if you receive a major internationally recognized award, such as a Nobel Prize, you will qualify for an EB-1 classification. Other awards may also qualify if you can document that the award is in the same class as a Nobel Prize. Since few workers receive this type of award, alternative evidence of EB-1 classification based on at least three of the types of evidence outlined below, is permitted. The worker may submit "other comparable evidence" if the following criteria do not apply:

1. Receipt of lesser nationally or internationally recognized prizes or awards for excellence;
2. Membership in associations in the field which demand outstanding achievement of their members;
3. Published material about the alien in professional or major trade publications or other major media;
4. Evidence that the alien has judged the work of others, either individually or on a panel;
5. Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field;
6. Evidence of the alien's authorship of scholarly articles in professional or major trade publications or other major media;
7. Evidence that the alien's work has been displayed at artistic exhibitions or showcases;
8. Performance of a leading or critical role in distinguished organizations;
9. Evidence that the alien commands a high salary or other significantly high remuneration in relation to others in the field;
10. Evidence of commercial successes in the performing arts.

Outstanding professors and researchers are recognized internationally for their outstanding academic achievements in a particular field. In addition, an outstanding professor or researcher must have at least three years experience in teaching or research in that academic area, and enter the U.S. in a tenure or tenure track teaching or comparable research position at a university or other institution of higher education. If the employer is a private company rather than a university or educational institution, the department, division, or institute of the private employer must employ at least three persons full time in research activities and have achieved documented accomplishments in an academic field.

Evidence that the professor or researcher is recognized as outstanding in the academic field must include documentation of at least two of the following:

1. Receipt of major prizes or awards for outstanding achievement;
2. Membership in associations that require their members to demonstrate outstanding achievements;

3. Published material in professional publications written by others about the alien's work in the academic field;
4. Participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field;
5. Original scientific or scholarly research contributions in the field;
6. Authorship of scholarly books or articles (in scholarly journals with international circulation) in the field.

Application Procedures

A USCIS Form [I-140 \(Petition for Alien Worker\)](#) is required. All I-140 petitions must be filed at the USCIS Regional Service Center that has jurisdiction over the place where the individual will work. The petition packet must include the required documentary evidence and should follow the specific filing guidelines of the Service Center. **No labor certification is needed for EB-1 petitions.**

While the EB-1 worker of extraordinary ability may petition for himself or herself, the employer must file the petition for an outstanding professor or researcher.

EB-2 Eligibility and Filing

The EB-2 classification includes: aliens who are "**members of the professions holding advanced degrees or their equivalent**" and aliens "**who because of their exceptional ability in the sciences, arts, or business will substantially benefit the national economy, cultural, or educational interests or welfare of the United States.**"

A petition for a **foreign professional holding an advanced degree** may be filed when the job requires an advanced degree (beyond the baccalaureate) and the alien possesses such a degree or the equivalent. The petition must include documentation, such as an official academic record showing that the alien has a U.S. advanced degree or a foreign equivalent degree, *or* an official academic record showing that the alien has a U.S. baccalaureate degree or a foreign equivalent degree and letters from current or former employers showing that the alien has at least 5 years of progressive post-baccalaureate experience in the specialty.

Qualified alien physicians who will be practicing medicine in an area of the United States certified by the Department of Health and Human Services as underserved may also qualify for this classification.

In order to be classified as having **exceptional ability in the sciences, arts, or business**, the individual must provide documentation of three of the following:

1. An official academic record showing the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability;
2. Letters documenting at least ten years of full-time experience in the occupation being sought;
3. A license to practice the profession or certification for a particular profession or occupation;
4. Evidence that the alien has commanded a salary or other remuneration for services which demonstrates exceptional ability;
5. Membership in professional associations;
6. Recognition for achievements and significant contributions to the industry or field by peers, government entities, professional or business organizations.

If the above standards do not apply to the petitioner's occupation, other comparable evidence of eligibility is also acceptable.

If you are a worker with exceptional ability in the sciences, arts, or business, you may apply to waive the requirement that you have a job offer if such a waiver would be in the national interest. To apply for a national interest waiver, you must submit Department of Labor Form ETA-750B.

National Interest Waiver of Job Offer Requirement ("NIW"). To qualify for the NIW, the individual must meet the "National Interest" test:

1. Foreign national will work in area of "substantial intrinsic merit," which includes the following seven, non-exclusive factors:
 - a. work will improve the U.S. economy;
 - b. work will improve the working conditions and wages of U.S. workers;

- c. work will improve education and training programs for underqualified workers
 - d. work will improve health care
 - e. work will provide more affordable housing for poorer U.S. residents
 - f. work will improve the U.S. environment (*In Matter of New York State Department of Transportation*, Int. Dec. 3363 (Acting Assoc. Comm'r, 1998))
 - g. Interested U.S. government agency has specifically made request for work (*In Matter of New York State Department of Transportation*, Int. Dec. 3363 (Acting Assoc. Comm'r, 1998))
2. Foreign national's proposed activity will be "national in scope" – benefit must accrue to more than a particular region of the United States (*In Matter of New York State Department of Transportation*, Int. Dec. 3363 (Acting Assoc. Comm'r, 1998))
 3. Foreign national will serve the national interest to a substantially greater degree than an available U.S. worker having the same minimum qualifications (*In Matter of New York State Department of Transportation*, Int. Dec. 3363 (Acting Assoc. Comm'r, 1998)): Foreign national must demonstrate a track record of success with some degree of influence on the field as a whole
 4. Foreign national's expertise must be significantly above that normally encountered in the field

Special Handling Labor Certifications for Foreign National College and University Teachers – must file Form ETA 9089 with U.S. DOL

Special Handling is a specialized labor certification process whereby the University must show that no ***equally*** qualified U.S. worker is available as opposed to the "traditional" labor certification process in which the employer must show that no ***minimally*** qualified U.S. workers are available. The University must demonstrate that a competitive recruitment and selection process was undertaken and the foreign national was as or more qualified than any U.S. worker who applied for the position. The Form ETA 9089 **application must be filed within eighteen months of the foreign national's hire in order to be eligible for Special Handling.**

Advanced Degree Professionals – must file Form ETA 9089 with US DOL. The foreign national must hold a master degree, its equivalent in education and experience, or higher to be eligible to file Form ETA 9089 in this category. The "equivalent" is defined as a foreign degree that has been evaluated by a professional company authorized to conduct evaluations and determined to be the equivalent to a U.S.-based university-level master degree.

The Form ETA 9089 process is discussed in more detail under the EB-3 category.

Application Procedures

After obtaining an approval of Form ETA 9089 (if applicable), USCIS Form [I-140 Petition for Alien Worker](#) is required. Your **employer** must file a USCIS Form I-140 (Petition for Alien Worker) at the USCIS Regional Service Center that serves the area where you will work.

EB-3 Eligibility and Filing

EB-3 classification includes:

- Aliens with at least two years of experience as skilled workers;
- Professionals with a baccalaureate degree; and
- Other workers with less than two years experience, such as an unskilled worker who can perform labor for which qualified workers are not available in the United States.

While eligibility requirements for the EB-3 classification are less stringent than the EB-1 and EB-2 classifications, you should be aware that a long backlog exists for visas in the "other workers" category. The regulations for EB-3 workers are found at [8 CFR § 204.5](#).

Skilled worker positions are not seasonal or temporary and require at least two years of experience or training. The training requirement may be met through relevant post-secondary education.

Professionals must hold a U.S. baccalaureate degree or foreign equivalent degree that is normally required for the profession. Education and experience may not be substituted for the degree.

Other workers are in positions that require less than two years of higher education, training, or experience. However, due to the long backlog, a petitioner could expect to wait many years before being granted a visa under this category.

Application Procedures

Your employer must file a USCIS Form I-140 at the USCIS Regional Service Center that serves the area where you will work. All I-140 EB-3 petitions must include a labor certification and a permanent, full-time job offer. *There are no exceptions.*

The Labor Certification Process: The U.S. DOL requires that an employer demonstrate that no minimally qualified U.S. workers were ready, willing and able to accept the position offered on Form ETA 9089 (PERM). The PERM process is designed to protect the U.S. workforce. Generally, a PERM is employer, position and geographic specific. Meaning, that if an employer withdraws the PERM or the foreign national leaves the employer, the foreign national would need to file a new PERM with the new employer.

PERM is designed as an "audit and attestation" process. The Form ETA 9089 is filed online via U.S. DOL processing site. It is filed after very specific recruitment procedures. This recruitment must be done not less than 30 and not more than 180 days prior to the filing of PERM with the U.S. DOL. In addition to the recruitment procedures, the employer must adhere to the U.S. DOL principles of the "Prevailing Wage." Generally, the employer must pay 100% of prevailing wage. This wage is determined in one of three ways:

1. The employer can submit a prevailing wage request to the State DOL.
2. The employer may also utilize the DOL's online salary survey, including DOL's newly designed four-tier wage determination scale.
3. The employer may also submit alternate wage data from a qualifying survey.

Recruitment Procedures: What are the steps needed to recruit for a PERM? The following recruitment steps are required for the PERM process:

1. Two Sunday advertisements in a newspaper of general circulation
2. Internal posting
3. Job Order posting with State DOL

4. Professional positions require three additional pieces of recruitment from the list below:
 - a. Employer's Internet site
 - b. Job Fairs
 - c. Job Search Websites
 - d. Private employment agencies
 - e. Trade/professional organizations
 - f. Employee referral program with incentives
 - g. On-campus recruiting
 - h. Campus placement office
 - i. Local/Ethnic Newspapers
 - j. Radio/Television Advertisements

If the recruitment results in no qualified U.S. candidates, then Form ETA 9089 is filed with the U.S. DOL.