

Permanent Residence at the University of Pennsylvania

Guidelines for Hiring International Scholars: Faculty, Researchers, Staff and Students

In order to consider a request from a nonimmigrant employee for University of Pennsylvania sponsorship in the permanent resident process, one must consider both University policy and government regulations. The University of Pennsylvania sponsors for US permanent residence only full-time, regular employees in certain academic positions. The University will not sponsor staff who are in nonacademic positions, unless a special case can be made for an exception to this policy. US immigration laws and University policy do not permit Penn to sponsor students, part-time employees, or temporary employees for permanent residence. (See **Policy No. 119: University Sponsorship for US Permanent Resident Status for Staff Positions**).

If the University is able to sponsor a nonimmigrant employee for permanent residence, ISSS will initiate a permanent residence application with the US government or authorize an immigration attorney retained by the employee to initiate an application. *A University-sponsored permanent residence application cannot be initiated without ISSS authorization.* Interested employees are advised always to consult with ISSS before hiring an immigration attorney. Persons initiating the permanent residency process without prior permission from ISSS risk having their application process delayed or terminated.

In a Final Rule published May 17, 2007, the Department of Labor (DOL) implemented new regulations regarding the permanent employment of aliens in the US. The Final Rule includes several major provisions, two of which are noted below:

1. Effective for labor certification applications filed on or after July 16, 2007, an employer may not receive payment of any kind associated with a labor certification application, nor may an employer receive reimbursement for any costs associated with a labor certification application, including payment of employer's attorneys' fees. The DOL is requiring that all costs associated with labor certification be paid by the employer and not the employee.
2. In addition, any labor certification application approved after July 16, 2007 must be "filed in support of a Form I-140" immigrant petition within 180 days of approval or it will "expire." Applications approved before July 16, 2007 will expire 180 days after July 16, 2007 if not filed in support of an I-140.

All University schools and departments should take steps to ensure that any employee for whom Penn has filed a labor certification application is informed of these regulations. If an immigrant petition is not filed on behalf of the employee within 180 days of the approval of the labor certification, we will be unable to continue permanent residence sponsorship for that employee.

Please feel free to contact our office for additional information.

Foreign National Employees in Academic Positions at the University

The University offers permanent residence sponsorship to full-time, regular foreign national employees in academic job classifications at the University. These positions include professor, associate professor, assistant professor and research associate (a department must have secure funding for at least three years in the future for the University to sponsor a research associate). The University does not sponsor post-doctoral fellows and lecturers for permanent residence, since these positions are considered temporary and do not always carry full University employee benefits. Individuals offered tenured appointments must have US permanent resident status before accepting the appointment.

Tenured Appointments

If a department is considering offering a tenured appointment to a foreign national who does not already have permanent resident status, the following points must be borne in mind:

- Since a tenured appointment is an appointment without limit of time, the only status appropriate for such an appointment is permanent resident status.
- Obtaining permanent residence takes time, between 10-12 months at the time of this publication.

- A tenured appointment cannot be conferred by the University until the individual has obtained permanent resident status.
- If an academic department is considering an offer of a permanent position and feels the delay is longer than they can wait to fill the position, the department may want to consider offering a temporary position, such as a visiting faculty appointment. This will enable the University to obtain H-1B visa status for the individual.
- If the scholar is already in the US on a nonimmigrant visa, adjustment of status to permanent resident status is sometimes possible. However, this process must be completed before the individual can take up the tenured appointment.

Tenure Probationary Appointments

An international scholar may be appointed to a faculty position that at the outset is not tenured. If the candidate does not have, at the time of appointment, the appropriate immigration status, the letter of offer should clearly state that the appointment is conditional upon obtaining the appropriate immigration status.

As with the appointment of a foreign national to a tenured faculty position, if the appointee does not have US permanent resident status, the University will normally sponsor the application for such status. If there is not sufficient time to obtain permanent resident status, the appointee may obtain H-1B status for the initial period of the appointment (i.e. the first three years in most instances). USCIS policy directives concerning H-1B status introduce the concept of "dual intent" which makes it possible for the employer to use H-1B status for tenure-track or lecturer appointments while in the process of obtaining permanent resident status for the appointees.

Non-Tenure Accruing Academic Appointments

Occasionally, the University will sponsor for US permanent residency certain individuals holding non-tenure accruing positions within the academic staff. In all instances there must be evidence of on-going support (a minimum of three years) for the position and an indication from the chair of the department of the desire for the University to sponsor the application. This policy will include some research associates and in a few cases, the position of senior lecturer.

Post-doctoral positions are temporary by nature and cannot be used as the basis for a University-sponsored application for permanent resident status.

Four Paths to Employment-Based Permanent Resident Status

The University will use the most appropriate of four procedures to obtain permanent residence for a qualified academic employee:

- an outstanding professor/researcher petition,
- an application for labor certification/special handling for a faculty teaching position,
- an application for labor certification for persons holding advanced degrees, or
- a national interest waiver for persons holding advanced degrees.

Detailed instructions on each of these four procedures are available from ISSS.

1. **Outstanding Professor/Researcher.** Approval of an outstanding professor/researcher petition can be obtained if the University can demonstrate that a sponsored employee has an exceptional record of scholarly achievement in his or her field. More than three years of teaching and/or postdoctoral research experience, a very strong record of publications, superlative evaluations by recognized experts in the field, and the receipt of prizes, awards, or other forms of professional recognition are usually required to obtain approval of an outstanding professor/researcher petition. The route to permanent residence through approval of an outstanding professor/researcher petition is relatively short, and can usually be completed in eight to twelve months.
2. **Labor Certification for Faculty Teaching Positions.** The University can apply to the Department of Labor for labor certification under *optional special recruitment and documentation* rules, which replace the

previous *special handling* rules, for a sponsored employee appointed to a faculty teaching position (as an assistant, associate or full professor). Under *special recruitment* rules the University is not required to demonstrate that there were no qualified US citizen or permanent resident workers available for the position, but only that the appointee was the best qualified applicant. The University can usually meet this requirement by presenting to the Department of Labor the details of the Penn departmental recruitment process that led to the faculty appointment. The route to permanent residence through labor certification under *special recruitment* rules usually takes between eight and twelve months.

*Please note that labor certification applications under special recruitment rules must be filed with the Department of Labor **within eighteen months of the sponsored employee's selection for the position.** Additionally, documentation of one print advertisement in a national professional journal and all other recruitment used in the search is required. Failure to file within this time period and to document the print ad and one additional recruitment method used in the search may make it impossible for the University to obtain permanent residence for an employee in a faculty teaching position for a period of several years or longer.*

3. **Labor Certification for Advanced Degree Holders.** If a sponsored employee does not meet the requirements for outstanding professor/researcher approval, the University can apply to the Department of Labor for labor certification. If granted, a labor certificate permits petition for permanent residence to USCIS. To obtain a labor certificate, the University must demonstrate that there are no qualified US citizen or permanent resident workers available for the position in question. This is done through a special advertising process under the supervision of the Department of Labor. The University must also meet Department of Labor salary requirements in order to obtain an approved labor certificate. Once salary (or "prevailing wage") requirements are met, most University applications for labor certification in the academic job categories succeed, since the positions in question generally require high levels of education and specialized experience in short supply in the domestic labor pool. The route to permanent residence through labor certification usually takes between twelve and twenty-four months to complete.
4. **National Interest Waiver.** Immigration reform legislation of 1990 and 1991 created a new path to permanent residence known as the "national interest waiver." This legislation allows the Attorney General "when (s)he deems it to be in the national interest, [to] waive the requirement... that an alien's services in the sciences, arts or business be sought by an employer in the United States." The provision can apply to both aliens of exceptional ability and to members of the professions holding advanced degrees (or the equivalent). These applications for permanent residence are exempt from the labor certification requirement.

To obtain a national interest waiver it must be demonstrated that:

1. the work being done is in the national interest
2. the alien's continued contribution is crucial to the work.

Applications are more likely to succeed if it can be shown that the alien's work meets one or more of the following seven conditions:

1. it improves the economy
2. it improves the wages and working conditions of US workers
3. it improves education and training programs for US children and under-qualified US workers
4. it improves health care
5. it provides more affordable housing for poorer US residents
6. it improves the US environment and make more productive use of natural resources, or
7. is requested by an interested US government agency.

The University may use the national interest waiver to obtain permanent resident status for Penn sponsored employees in order to avoid the longer labor certification process with the Department of Labor. (Please note that University employees who are not eligible for University permanent residence sponsorship - e.g. postdoctoral fellows or lecturers - can apply on their own behalf under the national

interest waiver provision, without University sponsorship. Supervisors may be asked to supply letters of reference for this application, but should make certain that application is not made on behalf of the University for an existing position or an offer of a future position.)

Nonimmigrant Employees in Non-Academic Staff Positions at the University

The University does not sponsor foreign national employees in non-academic staff positions such as research specialist, programmer-analyst, or laboratory technician for permanent residence. This policy, which is set out in the **University of Pennsylvania, Human Resources Policy Manual 119.1**, is an expression of the University's desire to provide employment opportunities for US workers in the Philadelphia area. The University can make an exception to this policy, however, if it can be demonstrated that there are no qualified US workers available in the Philadelphia area for a given staff position (119.2).

A University department can request an exception to this policy on behalf of a foreign staff member by writing a letter with an attached job description to ISSS. ISSS will forward the request to the University's Division of Human Resources, which will consider the request. Human Resources will contact the department directly with instructions on the exception request process. The process includes placement of a newspaper advertisement and other procedures necessary for consideration of the exception request. After these procedures have been completed Human Resources will grant or deny the exception request based on the results of its effort to assess the availability of US workers for the position in question.

If an exception request is granted, ISSS will initiate (or authorize the employee's immigration attorney to initiate) an application for labor certification with the Department of Labor. To obtain a labor certificate the University must demonstrate that there are no qualified US workers available for the staff position in question. A large majority of University applications based on staff positions succeed, although the success rate is somewhat lower than that for academic positions at the University, since job qualifications for staff positions are usually less restrictive than those for academic positions. The route to permanent residence through the University exception process and labor certification usually takes from twelve to twenty four months to complete.

Please note that while the Human Resources exception request process resembles some labor certification procedures, the exception process is completely separate from and usually has no bearing on an application for labor certification with the Department of Labor.

General Application Procedures for Filing for US Permanent Resident Status

There are three steps involved in obtaining US permanent residence on the basis of an offer of employment when an individual is in the US and seeking to adjust to permanent resident status while remaining in the US:

- Application for Labor Certification filed with the Department of Labor. The purpose of the labor certification application is to demonstrate that "the employer selected the alien for the job opportunity pursuant to a competitive recruitment and selection process, through which the alien was found to be more qualified than any of the US workers who applied for the job" or in the case of a teaching position, the "best qualified." This step is not necessary for an application filed under the outstanding professor/researcher or national-interest waiver category.
- Petition for immigrant classification filed with USCIS (I-140). This is the first step in the application for classification as an outstanding professor/researcher.
- Application for adjustment of status to that of a US permanent resident filed with USCIS. At the time of submitting the immigration petition noted in step 2 above, the applicant should obtain the forms required for the adjustment of status application from USCIS. This may be done in person at the USCIS office at 1600 Callowhill Street, from the USCIS web site at <http://www.uscis.gov/>, or by calling the USCIS Forms Line (a voice mail system) at 1(800)870-3676. Applicants should request an "I-485 packet" for adjustment of status. One packet is required for each family member who is adjusting status to permanent resident. Applicants should also take steps to insure that they have birth certificates and marriage certificates available by the time they expect to submit their adjustment of status application. ISSS has more detailed instructions on this step that will be given to the applicant.