

U.S. PERMANENT RESIDENCY FOR INTERNATIONAL STAFF



Office of International Education
Immigration Services

This session will cover:

- ▶ The employment based routes to Legal Permanent Residency (LPR) available through UGA (EMPLOYER) sponsorship for international staff (non-teaching).
- ▶ Factors to consider (timing, costs, obligations)

Obtaining LPR is a matter of eligibility.
There are **4 main routes to LPR**:

Family Based
226,000 visas
per year

Employment
Based
140,000
per year

Visa Lottery
55,000
per year

Humanitarian
(refugees and
Asylees)
10,000
per year

Self-sponsorship

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graph TD; A[Self-sponsorship] --> B[National Interest Waiver (NIW)]; A --> C[Alien of Extraordinary Ability];
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National Interest Waiver (NIW)

Alien of Extraordinary Ability

Employment Sponsorship

Outstanding Professor/
Researcher
(EB1)

Labor Certification

PERM for College/
University Teacher
(EB2)

PERM for Standard
Process
(EB-2 (Non-teaching)
and EB3)

THE MOST IMPORTANT THINGS TO REMEMBER ABOUT THE “PR” PROCESS....



It's confusing, frustrating, expensive, counter-intuitive and time-consuming

- ▶ UGA policy is very liberal:
 - ▶ Position must require a Bachelor's degree
 - ▶ Employee must have that degree, and any required prior work experience; in general work experience required cannot have been obtained while working at UGA
 - ▶ Position must be full-time employment
 - ▶ Department must intend to hire permanently or indefinitely
 - ▶ Department must agree to pay for sponsorship, and assist with required paperwork
- ▶ Employee must be personally eligible for U.S. permanent residency
- ▶ Departments can refuse to sponsor for PR. IF you refuse, your employee may end up in several years having to depart the U.S.

WHICH EMPLOYEES ARE ELIGIBLE?

- ▶ If you are likely to have good international candidates, contact us FIRST to help with ad content and ad placement
- ▶ After you make an international hire, request access to our “iStart” portal:
 - ▶ <http://istart.uga.edu>
 - ▶ Click on Administrative Services, and login using your UGA MyID
 - ▶ Complete and submit the request form.
 - ▶ We will be in touch (usually within one business day) to grant you access to the online request forms
- ▶ Accuracy and consistency in defining the job description, minimum requirements, and previous required experience is essential
- ▶ Internal Fee payment – charged upon form submission
- ▶ Managing expectations – advertising; timing; difficulties; outcomes

INITIATING THE PR PROCESS

- ▶ Difficult standard to meet
- ▶ Must prove:
 - ▶ Three years experience teaching or conducting research
 - ▶ Offer of “permanent” or tenure-track position at a U.S. College or University
 - ▶ Recognized internationally as a scholar or teacher who is outstanding in a specific academic area
 - ▶ Evidence needs to be provided in support of the petition

EB-1B: OUTSTANDING PROFESSOR OR RESEARCHER

- ▶ (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- ▶ (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements in the academic field;
- ▶ (C) Published material in professional publications written by others about the alien's work in the academic field. Material shall include the title, date, and author of the material, and translation if needed;
- ▶ (D) Evidence of the alien's participation as the judge of the work of others in the same or an allied academic field;
- ▶ (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
- ▶ (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

OPR – MUST SHOW EVIDENCE IN AT
LEAST TWO OF THE ABOVE
CATEGORIES

COSTS

- ▶ A good deal of work in assembling and reviewing documentation
- ▶ Subjective decision on the part of U.S. CIS

BENEFITS

- ▶ Category not currently backlogged for immigrant visa issuance
- ▶ No Labor Certification required from DOL

COSTS / BENEFITS TO FILING OPR

There are 4 steps involved:

- ▶ Applying for Dept. of Labor (DOL) certified “Prevailing Wage”
- ▶ Filing PERM DOL “Labor Certification” (LC) application (ETA 9089, filed by employer)
 - ▶ Attestation-based process, but we must maintain all evidence
- ▶ Filing the I-140 (filed by employer)
- ▶ Filing the I-485 (filed by employee)

EB-2:
LABOR CERTIFICATION IS
GENERALLY REQUIRED

- ▶ First step, following agreement on job description and requirements
- ▶ Prevailing wage determination obtained from the Department of Labor; online
- ▶ Can take 8 – 16 weeks or more to receive
- ▶ Employers required to offer 100% of prevailing wage as salary

1. PREVAILING WAGE

- ▶ What is it?
 - ▶ Program Electronic Review Management System
 - ▶ DOL attestation-based Labor Certification (LC) application to prove an employer cannot find qualified U.S. workers to fill an open position
 - ▶ Requires very strict adherence to DOL standards for recruiting
 - ▶ As a result, we often need to “re-recruit” for a position that is already filled (counter-intuitive part)
 - ▶ Several different types of PERM applications are possible, with differing standards
 - ▶ EB-3; EB-2; EB-2 Special Handling

2. PERM

- ▶ EB-3: professional positions requiring a Bachelor's degree; employee must have held that degree and any required previous work experience at the time of hire
- ▶ EB-2 Exceptional Ability: employee must possess a degree of expertise significantly above that ordinarily encountered; 10 yrs experience; professional licensing, etc.
- ▶ EB-2: professional positions requiring an advanced degree; employee must have held that degree and any required previous work experience at the time of hire
- ▶ EB-2 NIW: Exempted from the LC filing if we can prove work is in "the national interest". No need for an employer sponsorship

3. PERM CATEGORIES FOR STAFF

- ▶ DoL requires very specific advertising for non-teaching PERM applications.
- ▶ **Unless you contact our office ****before**** you advertise, it is highly likely that you will have to conduct a Labor Market Test if we are to move forward with the green card application**
- ▶ This involved placing new ads, and conducting a new recruitment.
- ▶ We must be able to prove, through the new recruitment, that there were no minimally qualified U.S. workers who applied.

...THE BAD NEWS...

- ▶ Human Resources places these ads, but the department must pay all advertising costs
- ▶ Employee cannot pay for costs of advertising, or legal fees
- ▶ If no minimally qualified US workers are available LC application can be filed.
- ▶ Employee cannot be involved in the PERM process, defining the advertising, or evaluating applicants in the recruitment process

PERM – STANDARD RECRUITMENT PROCESS

- ▶ Use Employers true minimum requirements, not foreign national's qualifications; min. degree required must be listed, as well as field
 - ▶ i.e.: ABD instead of PhD
- ▶ When do minimum requirements qualify as "Normal" to the occupation?
 - ▶ Set in general terms by DoL in online database - O*Net
- ▶ Job requirements cannot be overly restrictive.
- ▶ Experience gained on the job at UGA cannot be counted toward meeting the minimum requirements.

DEFINING THE JOB AND ITS REQUIREMENTS

- ▶ Much of the process handled by Human Resources
- ▶ 30-day job posting with the GA Dept. of Labor
- ▶ Two print advertisements – Sunday newspapers
- ▶ Provide internal notice of job opening
- ▶ 3 additional venues
 - Job fair
 - **Employer website**
 - **Trade Journal**
 - Private Employment firm
 - Employee referral program
 - Campus placement office
 - Local/ethnic newspaper
 - **Radio/TV ads**

REQUIRED ADVERTISING

- ▶ Employer must post a notice of the job opportunity at the worksite for 10 consecutive business days. IS will send this to the sponsoring Department and HR
- ▶ Posting must include salary for standard (non-teaching), but ranges are permitted so long as bottom of range is no lower than prevailing wage.
- ▶ IS will email the department the posting and will notify the department when to remove it and obtain department head signature.
- ▶ IS must receive the original signed posting back to place in the DoL audit file.

INTERNAL POSTING REQUIREMENT

- ▶ All cv's / resumes should be reviewed upon receipt
- ▶ Any candidate that appears qualified must be contacted immediately
- ▶ Candidates are qualified if they can acquire skills through a "reasonable" amount of training
- ▶ Document all attempts to contact candidates
- ▶ ISIS will send templates for documenting all of this

EVALUATION OF RESPONSES TO ADS

- ▶ Interview may be in person or over the telephone
- ▶ An applicant evaluation form should be completed for each interview to ensure consistency, to assess qualifications, and to document whether minimally qualified
- ▶ If possible, assess if the worker is a U.S. citizen or permanent resident. If **not**, do not include in available candidate pool.
- ▶ Do not discourage candidate or tell them the job is unavailable (if re-advertising and testing the labor market)
- ▶ Remember the goal is to be able to *prove* that there were no other **minimally** qualified U.S. workers

INTERVIEWING – BEST PRACTICES

- ▶ All recruitment conducted must be listed in detail
- ▶ Document that all responses received were evaluated
- ▶ Explain why US workers interviewed were not MINIMALLY qualified, even if given reasonable on the job training
- ▶ Confirm all laid off employees were notified of job opportunity (if applicable)
- ▶ All of this must occur within 180 days from beginning of recruitment.

PREPARING RECRUITMENT REPORT



- ▶ 30 day quiet period required after last ad before case can be filed. During this time you will be required to forward all documents necessary to ISSIS as required for the audit file.
- ▶ All recruitment conducted must be listed in detail
- ▶ Document that all responses received were evaluated
- ▶ We must explain why US workers interviewed were not qualified, even if given reasonable on the job training

AUDIT FILE REQUIREMENTS PRIOR TO FILING

- ▶ IS has the only signature authority for UGA to file the LC (DOL Form 9089). This form requires extensive and detailed information. At the appropriate time the department and employee will receive an inquiry from ISSIS requesting information required for the form.
- ▶ IS is contacted by DOL via email or phone call after filing to confirm valid application.
- ▶ Once filed by IS, corrections can't be made

FILING THE PERM APPLICATION (ETA 9089 FORM)

- ▶ Wait for Labor Certification approval (about 2 to 4 months, if no audit)
- ▶ Once approved and received, employer can file I-140 petition
- ▶ If employee is not in a backlogged immigrant visa category, he or she can also file personal application for the green card “concurrently” – called the I-485, or “Adjustment of Status” application
- ▶ Timing of Labor Cert filing: 8 to 9 months if no audit; 2 years for audits and or appeals
- ▶ Approx. 30% of cases are audited nationally (Internally – less than 10%)

NEXT STEPS?

Concurrently filing the I-140 and I-485 is possible. Some people may want to file concurrently due to the following:

- EAD – flexible work permission, unlike the H1B
- Spouse can get EAD and thus work permission
- Advanced parole for travel purposes negates the need for obtaining a visa
- Visa cost: with the I-485 and travel document, no non-immigrant visa renewal is required
- Internationals cannot file concurrently unless there is a visa number available (see Visa Bulletin)
- http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html
- ISSIS cannot assist with filing the I-485 as we are not immigration attorneys representing the employee

CONCURRENT FILING

What is a priority date?

- ▶ For applications filed directly with USCIS it's the date the employer petition is received at the USCIS service center.
- ▶ For application involving the DOL it is the date the Labor Certification was submitted electronically

VISA BACKLOGS AND PRIORITY DATES

Why does this matter?

- ▶ An immigrant visa must be available to the beneficiary of the labor cert/I-140 BEFORE the immigrant can file an I-485 for the green card
- ▶ The visa bulletin contains information about the availability of the visas in a particular category (EB-1, EB-2, EB-3).
- ▶ Beneficiaries have to check the visa bulletin to determine if they can file the I-485.
- ▶ Filing of the employer's I-140 does not give the international any legal status in the U.S., nor any work eligibility. Vital for the international to have and to maintain an underlying work visa status (usually an H-1B) until the green card is approved

PRIORITY DATES (CONT)

- If there is a backlog in the category under which we filed, the priority date showing on the Visa Bulletin will determine if an I-485 can be filed. If the beneficiary's priority date is **before** the date listed for the EB category and the beneficiary has an **approved** I-140 petition, he/she may file an I-485 application.
- ▶ If the beneficiary's priority date is **on or after** the date listed, he/she cannot file the I-485. The beneficiary will need to maintain current immigration status to remain in the U.S.
- ▶ H status can be extended beyond 6 years if 365 days have elapsed beyond the priority date.

PRIORITY DATES (CONT)

VISA BACKLOGS

VISA BULLETIN FOR SEPTEMBER 2015

PUBLISHED BY THE U.S. DEPARTMENT OF STATE

Employment - Based	All Other Areas	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01MAR12	01AUG08	C	C
3rd	01OCT15	01OCT12	15JUN04	01OCT15	08JAN08
Other Workers	01OCT15	22DEC06	15JUN04	01OCT15	08JAN08

- ▶ If you think you have a significant likelihood of hiring an international, please contact us to request assistance with ad content and advertising before you begin the search.
- ▶ Once you make an international hire, contact us to begin the PR paperwork
- ▶ Three request “steps” to initiate the sponsorship:
 - ▶ Step 1: iStart access (<http://istart.uga.edu>)
 - ▶ Step 2: Department representative completes department forms
 - ▶ Step 3: Employee completes employee biographical information forms We appreciate your help...and patience...;-)
- ▶ The IS advisor will then be in touch to begin the process.

IS PROCESS

- ▶ All advertising costs
- ▶ Internal IS “cost recovery fee”: \$ 2,194. (fee for service, not approval); \$500. for AoS assistance
- ▶ DHS filing fee I-140 application: \$580.
- ▶ DHS premium processing I-907 application if time is short: \$ 1,225.
- ▶ Total: \$3,230 to \$5,955
- ▶ Personal cost to employee for green card application – I-485 application: \$ 1,070. Additional \$ 1,070 for spouse. Dept can choose to pay this if UGA policies and funding sources allow.
- ▶ Employee can only pay the I-485 fees, and the premium processing fee (if salary is \$1,225. above prevailing wage).

FILING COSTS



THE GOAL....

- ▶ Immigration Services
- ▶ Office of International Education
- ▶ 1324 South Lumpkin Street
- ▶ Athens, GA 30602

- ▶ (706) 542-2900
- ▶ Fax: (706) 583-0106
- ▶ immigration@uga.edu
- ▶ <http://www.issis.uga.edu>

IS CONTACT INFORMATION