

North Carolina Central University

Office of International Affairs

Permanent Residency Sponsorship Procedures for Departments

In order for a non-US citizen to live and work in the U.S. permanently, he or she must obtain lawful permanent residence status. As an employer, North Carolina Central University (NCCU) can pursue employment-based permanent residence status for any employee whom the university intends on retaining beyond the duration of their temporary visit. Sponsorship for permanent residence (PR) or a “green card” requires a significant commitment of University resources. Governmental agencies such as the Department of Homeland Security (DHS), Department of State (DOS), U.S. Department of Labor (DOL) and U.S. Citizenship and Immigration Services (USCIS) are responsible for administering and regulating this immigration process. Applying for permanent residency involves multiple steps and can take years to obtain. *The University cannot control the amount of time it takes to obtain permanent residence.*

NCCU sponsors two categories for PR only – (1) Teaching Faculty under Optional Special Recruitment (previously known as Special Handling) and (2) Outstanding Professors and Researchers. NCCU does not provide sponsorship in cases where an individual can self-petition, such as for National Interest Waivers or Extraordinary Ability. The following information serves as a guide to NCCU’s policy and procedures for the permanent residency application process for these categories. The Office of International Affairs (OIA) is here to assist departments with this process. Departments are prohibited by NC Statute from using outside attorneys when the employer, NCCU, is the legal petitioner of the immigration case.

Category One – Optional Recruitment for Teaching Faculty (Requires Labor Certification by DOL)

Policy:

Under Optional Special Recruitment for teaching faculty, the DOL requires that a labor certification application be filed within eighteen (18) months of the final selection of the candidate and NCCU must be able to prove to the DOL that the foreign national selected for sponsorship is more qualified than any U.S. worker who applied for the position. DOL regulations also require that the individual sponsored must have an offer of full-time, permanent employment as defined by USCIS to be considered for lawful permanent residence. USCIS defines permanent as “tenured, tenure-track or for an indefinite or unlimited duration of which employee has expectation of continued employment unless there is good cause for termination.” Therefore, NCCU sponsorship will be given under the following conditions:

- When the employee is in a full-time, tenure-track, teaching position (actual classroom teaching), there is a compelling institutional need and the employee demonstrates commitment to the University’s academic mission and interests.

Departments *should never* promise sponsorship before hiring as the above conditions and following procedures must be met. **Only the Provost on the recommendation of the Director of OIA can approve requests for sponsorship, and no commitments to sponsor a foreign national faculty member for permanent residence may be made without prior approval from the Provost's office.**

Procedures for Labor Certification under PERM:

- ❖ Sponsorship should be initiated by the hiring department through communicating to its Dean or Director its wishes to sponsor a foreign national faculty member for permanent residency and by submitting a completed Preliminary Information for Permanent Residency Sponsorship form to OIA for review. A written justification that includes a comprehensive professional and academic development plan (i.e. current and proposed academic research, sponsored research, teaching and curriculum development) for the faculty member should be attached as supporting documentation. After review, it will then be forwarded to the Provost for final approval.
- ❖ If the request is approved by the Provost, the Office of International Affairs will be notified and the hiring department should prepare and submit to the Office of International Affairs for review, the proper documentation for the Department of Labor Audit (DOL) File as outlined in the checklist below. Note that some of the contents from the EEO Office's Affirmative Action Report can be used to complete the audit file checklist. *Because the audit file documentation pertains to the faculty search, this information is not to be submitted by the faculty member being sponsored, but by someone else designated by the Department to collect the documentation.*
- ❖ The documentation will be reviewed in the OIA office and if it meets DOL requirements, a Labor Certification Application will be filed with DOL under PERM. PERM is the electronic, attestation-based system used to file the foreign labor certification application.
- ❖ **Note timeline.* Again, under PERM, a special provision for colleges and universities allows the employer to use the results from its own competitive recruitment procedure to select its final candidate. This is provided the labor certification application is filed * within 18 months of final selection, not the employment start date. If the labor certification application is not filed within 18 months of final selection, another search must to be conducted and the hiring department and faculty member must be prepared to deal with the ramifications the re-recruitment results may bring. To ensure appropriate deadlines are met, departments should initiate the process no later than twelve (12) months from the date of the final selection of the candidate.
- ❖ By DOL law, a Prevailing Wage Determination must be obtained from the DOL National Prevailing Wage Center. This prevailing wage or salary must be determined before filing the labor certification application. By law, the foreign national employee must be paid the prevailing wage.
- ❖ Notice of the filing must be given to current employees between 30 and 180 days prior to filing the application.
- ❖ All of these steps take time and the 18 month timeframe should be considered carefully to ensure filing can be done in time. The time it takes for DOL to certify or deny the case for PERM can take up to a year or more. Many times DOL conducts random audits after the Labor Certification Application is filed, which can also prolong the decision for several additional months.

- ❖ If the application is approved or certified by DOL, the I-140 (Employment Petition) and I-485 (Adjustment of Status Petition) can then be filed with USCIS, either separately, the I-140 being first, or concurrently.
- ❖ USCIS Fees: The preparation of and cost for filing the I-140 is covered by OIA because it is a university petition. The cost for filing the I-485 is to be paid by the beneficiary of the petition. Please see the USCIS website, <http://www.uscis.gov/files/form/g-1055.pdf> for a list of current fees.
- ❖ OIA will complete the I-140, as this is a university petition and pertains to the permanent employment of the faculty member. The employee, if s/he has questions regarding completion of the I-485 should seek an outside attorney for assistance because this is a non-university petition, and the sole legal responsibility of the faculty member.

CHECKLIST: PERM Department of Labor Audit File for Optional Recruitment (Teaching Faculty) Completion of the checklist is the responsibility of the sponsoring department.

As per the PERM regulations, the items below must be retained in the Audit file and must be available upon the filing of the case in the event that DOL requests them. If DOL requests them, which they regularly do, DOL will require them within 30 days of the PERM submission. Failure to provide them can result in denial of the case as well as fines, penalties, and/or supervised recruitment of the university by DOL. Contact OIA for templates for items 1 – 3.

1. Letter/Written Statement from preferably the Department Chair attesting to the degree of the international faculty member's education or professional qualifications and academic achievements.
2. Final report of faculty, student or administrative body responsible for issuing the recommendation or selection of the international faculty member.
3. Signed statement by individual with actual hiring authority outlining in detail the recruitment process and total number of applicants for the position and lawful job-related reasons why the international faculty member is more qualified than all other applicants.
4. Appointment/Offer letter issued to the international faculty member by Dean/Provost/Chancellor after selection. Note: Application for Permanent Employment Certification must be filed within 18 months of offer.
5. Original signed Notice of Filing a Permanent Labor Certification Application with evidence of electronic in-house posting.
6. Original tearsheet of the advertisement(s) from a national professional journal, if a print publication was used including the date, title of the publication, duties - OR - if an electronic or web-based journal was used, documentation must include evidence of the start and end dates of the advertisement placement and text of the advertisement.
7. Evidence of *all* other recruitment sources, such as copies of ads, website postings, flyers, etc.
8. Photocopies of all resumes/curriculum vitae or other correspondence received from applicants.

9. Current and comprehensive curriculum vitae of international faculty member.

Note: Must provide complete name, street address, field of study, year of completion and degree earned for each school attended.

Note: For each prior employer, must provide complete name, street address, exact dates of employment (mm/dd/yy to mm/dd/yy), hours worked per week, supervisor's name/title/contact phone number, and a brief description of job duties.

10. Photocopies of all prior diplomas with transcript.

Note: If documents are not in English, a certified translation must be provided.

11. Photocopy of international faculty member's most recent I-94 Departure Record.

12. Complete copy of international faculty member's passport.

More Guidance on the National Professional Ad:

An employer may use a print or an electronic or web-based national professional journal to satisfy the regulatory provision which requires use of a national professional journal for advertisements for college or university teachers.

If using a print publication, documentation consists of an original tearsheet or certified tearsheet which includes the date of publication, title of publication as well as the ad itself.

If using an electronic or web-based journal, the advertisement for the job opportunity must be posted for at least 30 calendar days on the journal's website. Documentation of the placement of an advertisement in an electronic or web-based national professional journal must include evidence of the start and end dates of the advertisement placement and the text of the advertisement.

DOL has refused to provide a list of acceptable national professional journals. DOL has a preference for the Chronicle of Higher Education. If another journal is used, the journal must be nationally distributed and published by a professional society/organization/association. Best practice is to use a journal that consists of more than help wanted ads and is not a newsletter.

Caution: requirements listed in all forms of recruitment may not exceed those indicated on the Form 9089. DOL may interpret *preferences* noted in an advertisement or on the Form 9089 to really be employer requirements since preferences may discourage potential applicants. It is advisable to be clear in advertisements on whether PhD is required or ABD is acceptable. If prior experience or training is required, it is best practice to quantify it.

Avoid pointer ads and ads that list openings by title alone.

Category Two – Outstanding Professors and Researchers (Does Not Require Labor Certification by DOL)

Policy:

Foreign National faculty members who qualify for *Outstanding Professors and Researchers* are exempt from labor certification; however NCCU is required to petition and submit a Form I-140 to USCIS. The faculty member must provide evidence that he or she is recognized internationally as outstanding in the academic field specified in the petition. The faculty member must be full-time tenure-track for teaching or the equivalent for research in the academic area and also have at least 3 years of experience in teaching or research in a specific academic area.

Documentation Required:

*Qualification for this category must include at least a minimum of two of the following as evidence:

- Documentation of the faculty member's receipt of major prizes or awards for outstanding achievement in the academic field;
- Documentation of the faculty member's membership in associations in the academic field which require outstanding achievements of their members;
- Published material in professional publications written by others about the faculty member's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
- Evidence of the faculty member's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
- Evidence of the faculty member's original scientific or scholarly research contributions to the academic field; or
- Evidence of the faculty member's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

*Letter of Support by the Department Chair or Director (A template letter is available in OIA.)

*Letters from recognized experts in the field clearly explaining the faculty member's contributions and standing in the field

*Letters from current/previous employers to demonstrate three (3) years of experience

***USCIS Fees:** The cost for filing the I-140 is covered by the OIA. The cost for filing the I-485 (any dependents would be included in on his part of the process) is to be paid by the beneficiary of the petition. Please see the USCIS website, <http://www.uscis.gov/files/form/g-1055.pdf> for a list of current fees.

Contact Information:

If the foreign national faculty member feels he or she may be eligible for this classification or have further questions regarding any of these procedures, please contact the Office of International Affairs at 530-7912 or by email at blewis@nccu.edu for an appointment.