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U.S. PERMANENT RESIDENCY – UNIVERSITY POLICIES AND PROCEDURES

PURPOSE

The purpose of this policy is to:

- *Identify those positions for which The University of Texas at Arlington will consider employer based permanent residency sponsorship.*
- *Establish the procedures for requesting, obtaining approval for, and processing employment-based Permanent Residence petitions for The University of Texas at Arlington.*
- *Establish immigration procedures in compliance with state and federal laws as well as related institutional policies and procedures.*

The University of Texas at Arlington Sponsorship for Permanent Residency

This information is for the The University of Texas at Arlington Hiring Departments who are interested in sponsoring a foreign national for U.S. Legal Permanent Residence and foreign nationals. In addition to university policy and processes regarding such sponsorship included is general information about immigration law requirements for obtaining U.S. Legal Permanent Residency (LPR) under specific employment based categories.

Legal Permanent Residency (LPR) is also referred to as the “green card”, “immigrant”, and “resident alien” process. LPR allows an individual to live and work in the US for an employer without the time limitation typical of non-immigrant visas. LPR typically follows several years in a non-immigrant status such as H1B, TN, O-1, J-1 or F-1.

Employment based LPR often requires employer sponsorship. What does it mean to be “sponsored” by The University of Texas at Arlington for permanent residency? The term “sponsor” refers to the act of lending support to an application through the means of a long-term job offer. Depending on the type of position being offered, the qualifications of the foreign national, and the specific type of immigration procedures required, the university may choose to sponsor or support the application by signing certain immigration documents verifying it is offering the employee a permanent position. **An offer of a permanent position refers to an offer of a long-term position at the University. Sponsorship for permanent residence does not constitute a guarantee of lifetime employment or of tenure.**

What does it mean to sponsor a foreign national for Permanent Residence “**if it is in the best interest**” of The University of Texas at Arlington? Most employment-based permanent residence petitions are contingent upon a full-time, long-term employment relationship. *In these cases, it is the EMPLOYER who files the application on behalf of the foreign national employee and who is liable with regard to the good faith and veracity of the petition.* For this reason, “in the best interest of the university” means sponsorship decisions are based solely on institutional need for a candidate’s unique skills and expertise, and not on “personal favors.” To do otherwise would subject The University of Texas at Arlington to liability, as well as compromise the institution’s reputation.

Process for Obtaining Approval for UT Arlington Sponsorship

A department requesting to sponsor a foreign national employee will submit a formal request signed by the Chair and Dean to the Office of International Education (OIE). Not all positions at The University of Texas at Arlington will be sponsored for U.S. Legal Permanent Residency. A department should not promise to a prospective or current employee the University will sponsor them for U.S. Permanent Residency unless approval has been obtained in accordance with this policy.

An individual employee cannot initiate the request for institutional sponsorship for U.S. Legal Permanent Residence. An individual employee or department may not hire an outside attorney to prepare and/or sign any immigration documents on behalf of The University of Texas at Arlington. Moreover, pursuant to the Department of Labor regulations, sponsoring departments cannot require or allow a foreign national to pay employer/university related attorneys fees.

Authority

The OIE reviews all requests for sponsoring an international employee for employment-based U.S. Legal Permanent Residency.

The Provost has the final right of decision to a sponsoring department's appeal on an OIE denied request to initiate a Permanent Residency application.

The Executive Director of the Office of International Education by the signatory power of the Office of the President at The University of Texas at Arlington is the sole authorized official eligible to sign any documentation required for filing applications for U.S. Legal Permanent Residence. The International Coordinator for Employment at the Office of International Education reviews all applications prior to referring for signatures to the Executive Director. If you have any questions, please contact Dr. Judy C. Young, Executive Director of the Office of International Education, and/or Jose L. Fleming, J.D., International Coordinator for Employment.

The Office of International Education (OIE) does not provide personal legal advice to foreign national employees on the subject of U.S. Legal Permanent Residency and/or other immigration issues. The OIE does provide information and assistance to a UT Arlington sponsoring department filing legal immigration documentation for UT Arlington so that a foreign national, "Beneficiary", can be legally employed when it has been determined that such employment is in the best interest of UT Arlington.

Sponsoring Departments must use and pay for one of the immigration attorney's approved by The UT System Office of General Counsel if OIE is unable to process the permanent resident application. Use of a UT System approved attorney for the LPR process does not mean the Sponsoring Department can by-pass the regular LPR process of requesting departmental sponsorship approval from Provost.

Positions That Will Be Considered For Sponsorship

Individuals in the following categories may be considered for University sponsorship for U.S. Legal Permanent Residence if the position is "**permanent**". Permanent is defined as a position in which there is no anticipated ending date on the part of both the employer and the employee. The foreign national must have no plans to cease employment at the university throughout the Permanent Residence process. Again, it does not mean an individual has a guarantee of lifetime employment or of tenure. Please see the **Legal Permanent Resident Forms** available at The International Office of Education outlining the criteria for processing a Permanent Resident application for Teaching Faculty and Research Faculty Positions.

The Following is a list of the types of positions The University of Texas at Arlington will sponsor:

1. TEACHING FACULTY POSITIONS

Full-time tenured or tenure-track faculty with title of: Assistant Professor, Associate Professor, Full Professor, or Clinical Professor. Permanent Residency Sponsorship is not available for part-time faculty with title of Adjunct, Instructor, or Lecturer.

2. RESEARCH FACULTY POSITIONS/FACULTY RANK

Full-time non-tenured track faculty members holding the title assistant professor, associate professor or professor approved for the primary project of research activities. It does not include post-doctoral positions. It does include titles under associates of the faculty like Librarians. The hiring department must be able to demonstrate that it is a permanent position. Grant-funded positions may be considered if there is a reasonable expectation that the grant for the position will last into the foreseeable future. **Faculty members** and/or **research scholars** with the rank of research associate or higher must be employed full-time at the University of Texas at Arlington in H-1B classification for at least three years.

3. STAFF POSITIONS

Full-time staff permanent position that are documented as “difficult to fill” by the institution office of Human Resources when other non-immigrant options are exhausted. A permanent resident application for non-academic staff members requires a bona-fide job search including posting through Human Resource published job descriptions, newspaper ads, and demonstration that no qualifying US worker is available. Depending on the complexity of the case, OIE may require the employing department to use and pay for services of a UT System approved immigration attorney with which UT Arlington contracts.

Exceptions to the above criteria are considered for extraordinary circumstances on a case-by-case basis by The Office of the Provost. A request for an exception must be submitted to The Office of the Provost from the Dean.

All employment-based permanent residence sponsored employees are to remain in 100% paid employment status during the pendency of the application. An application will be withdrawn if a change in the employment status such as reduction of percentage of time, leave of absence, change in the job title or duties, or termination occurs.

Applications in the Teaching Faculty category will have priority in processing as those types of applications normally have a set 18-month deadline for filing at the State Employment Security Agency and the U.S. Department of Labor.

Procedure for Determining U.S. Lawful Permanent Resident Sponsorship¹

The following steps are required for sponsorship consideration in obtaining U.S. Legal Permanent Resident status, LPR, through the University of Texas at Arlington:

1. EMPLOYING DEPARTMENT (must submit a letter to the OIE)

¹ Please see the **Legal Permanent Resident Forms** available at The International Office of Education outlining the criteria for processing a Permanent Residence application for Teaching Faculty and Research Faculty positions.

The Employing Department seeking to sponsor the foreign national must submit a written request, signed by the Chair and Dean, to the Office of International Education explaining why sponsoring the individual is in the best of interest of The University of Texas at Arlington. The Employing Department must provide adequate documentation to the OIE confirming that the offer of employment is long-term, permanent in nature, and expected to last indefinitely. The following points should be included in the request letter.

- Rationale for such a request
- Evidence of department funding for at least three years
- Credentials of the individual
- Job title
- Statement describing the individual's special abilities
- Evidence regarding the permanency of position

2. **OFFICE OF INTERNATIONAL EDUCATION (Response Letter)**

The OIE will respond in writing to the Employing Department's request with a copy directed to Beneficiary.

3. **SPONSORING DEPARTMENT and FOREIGN NATIONAL REQUIREMENTS**

a. **The Commitment Letter**

The foreign national must submit a Commitment Letter to his/her sponsoring department with a copy forwarded to the Office of International Education, International Coordinator for Employment. This letter should state that the foreign national commits to continue his/her work for The University of Texas at Arlington for a minimum of three years into the future.

b. **Meet with the Office of International Education, OIE, International Coordinator for Employment**

After the OIE has approved the request, the Sponsoring Department must contact the OIE, International Coordinator for Employment, to schedule an appointment between the foreign national, faculty, sponsor, and/or department administrator to review credentials.

4. **OFFICE OF INTERNATIONAL EDUCATION, INTERNATIONAL COORDINATOR FOR EMPLOYMENT**

OIE has the right to decide which LPR cases it can process. Sponsoring Departments may only make a request to initiate the LPR process.

- Upon review of the foreign national's credential and the University criteria for sponsorship, the OIE Executive Director and the International Coordinator for Employment will make a determination regarding whether or not the foreign national meets University and Federal guidelines for sponsorship. In certain cases, the Provost may be called upon to make a final determination.
- If the OIE Executive Director and the International Coordinator for Employment determines the foreign national DOES NOT meet University and Federal guidelines for sponsorship, the International Coordinator for Employment will notify the faculty sponsor and/or department administrator in writing and recommend other potential options, if any.
- Following a favorable determination, the Employing Department and the foreign national may begin gathering and submitting all required forms and documentation pursuant to the preference category in which he/she will be applying.
- After review of the foreign employee's credentials and other immigration evidentiary documentation it may be determined he/she may not be eligible for a certain immigrant visa classification.

The OIE ***MUST approve, sign, and submit the immigration petition to the USCIS for the following employment preference categories, and must process them in-house unless OIE Executive Director and the International Coordinator for Employment authorizes the use of outside counsel, and the hiring department pays for an outside attorney to assist.***

- First Preference Employment based cases -
EB-1(B): Outstanding Professor or Researcher
Outstanding professors or researchers who are internationally recognized, have a minimum of three years of experience, and have been offered a tenured, tenure-track, or long-term research position comparable to tenure-track at a university or research institution. No labor certification is required. A job offer is REQUIRED.
- Second Preference Employment based cases -
EB-2: Advanced Degree Holder
Members of the professions holding advance degree. An “advance degree” is defined as any academic or professional degree or foreign equivalent above the U.S. baccalaureate. In some cases, a baccalaureate plus five years of appropriate experience can be counted as a master’s degree. A Permanent Labor Certification and a job offer ARE REQUIRED. See **PERM PROCESSING** section.
EB-2: Exceptional Ability in the Science, Arts, or Business
An individual with at least 10 years of experience in the field with expertise significantly above that ordinarily encountered in the sciences, arts, or business. One must have an offer of a permanent full-time position. Labor certification required. See **PERM PROCESSING** section.
- Third Preference Employment based cases -
EB-3:
Skilled workers, professionals, and other workers. Professional who do not hold advance degrees, but who hold licenses, certificates, or other professional qualifications.
A Permanent Labor Certification and a job offer ARE REQUIRED. This category is over-subscribed and is not recommended unless there is no other recourse.

The OIE Executive Director and the International Coordinator for Employment **MUST be informed of a foreign national’s filing for any of the following preference categories, but OIE or any University of Texas at Arlington representative is not responsible for the filing or signing of the I-140 petition to USCIS since no employer sponsorship is required:**

- First Preference Employment based cases -
EB-1(A):
Persons of extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who will prospectively be of substantial benefit to the United States. No labor certification is required. A job offer is NOT required. The burden of proof is on the foreign national. A foreign national may apply under this category by themselves or they may file through an attorney whereupon they are responsible to pay for their legal fees.

- Second Preference Employment based cases -

EB-2(National Interest Waiver):

Aliens of exceptional ability in the sciences, arts, or business whose presence and activities in the U.S. are in the national interest. A job offer is NOT required and the labor certification is waived. The burden of proof is on the foreign national to first establish they have the appropriate credentials; and have the ability to make a unique and necessary cultural impact to the U.S. population in general in areas of science, health, energy, defense, and education.

PERM PROCESSING

PERM stands for **P**rogram **E**lectronic **R**eview **M**anagement process. PERM is a new system of filing a permanent labor certification application with the Department of Labor (DOL) to sponsor permanent residency (PR) for foreign national employees. Filing a labor certification is the first step of the three-step PR process.

By filing a labor certification for a faculty position, the employer is asking for a finding by DOL that there are no qualified, willing, able, and available U.S. workers to do the job that the employer is offering to a foreign national and that the employment of an alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

All labor certifications filed with OIE on or after March 28, 2005 must be filed (by the employer) meeting the **PERM** recruitment requirements. **PERM** has two tracks: Faculty Special Handling option for university teachers; and standard option for non-teaching faculty and professionals.

PREMIUM PROCESSING

U.S. Citizenship and Immigration Services (USCIS) has added three new categories to the Premium Processing Service, which allows U.S. businesses to pay a \$1,000 Premium Processing fee in exchange for 15-calendar-day processing of their case.

USCIS now accepts Premium Processing requests for:

Form I-140, Immigrant Petition for Alien Worker, involving the following immigrant visa categories:

- EB-1, outstanding professors and researchers,
- EB-2, members of professions with advanced degrees or exceptional ability *not seeking a National Interest Waiver*, and
- EB-3, workers other than skilled workers and professionals (i.e., unskilled labor requiring less than two years of training or experience.

Under the Premium Processing Service, USCIS guarantees petitioners that, for a \$1,000 processing fee, it will issue either an approval notice, or where appropriate, a notice of intent to deny, a request for evidence or open an investigation for fraud or misrepresentation, within 15 calendar days of receipt. If the petition is not processed within 15 calendar days, USCIS will refund the \$1,000 fee and continue to process the request as part of the Premium Processing Service. In addition to faster processing, petitioners who participate in the program may use a dedicated phone number and e-mail address to check on the status of their petition or ask any other questions they may have concerning their petition. Departments must contact OIE as soon as PR sponsorship is anticipated so as to avoid the requirement of incurring this fee.

INSTITUTIONAL CASE RANKING GUIDELINES

Unless the Provost decides otherwise, the OIE will prioritize cases for U.S. Legal Permanent Residence as it determines necessary, depending on the number of pending cases and staffing constraints. Some of the factors that will be considered in prioritizing cases include:

- Whether a given case has a deadline for submission;
- The relative permanence of employment of each case;
- The length of service of the employee at the university;
- The length of time the employee has already spent in the H-1B status;
- The length of time the employee can continue to remain in H-1B status;
- The likelihood that a case will be approved;
- The seniority and level of the university position, as determined by salary and other considerations;
- Whether the employee has other reasonable options for permanent residence, such as self-sponsorship.

AUTHORIZATION TO SIGN U.S. PERMANENT RESIDENT RELATED DOCUMENTS

Only the Office of the President and/or OIE Executive Director has the authority to sign U.S. Permanent Resident immigration documents on behalf of the University of Texas at Arlington. Further, a university representative or official, does not have the authority to sign a G-28 form, “Notice of Entry of Appearance as Attorney or Representative”, or any other similar form which provides a limited power of attorney to outside counsel to act on the university’s behalf with respect to an immigration matter unless appropriate written approvals have been obtained from the University of Texas System Office of General Counsel and the Texas Attorney General.

Recommendation for Retaining Outside Counsel

A determination will be made by the Office of International Education if retaining outside counsel is in the best interest of The University of Texas at Arlington. The best interest standard is partly based on institutional case ranking guidelines and such factors as staffing constraints and/or the complexity of the case. OIE will file PERM cases if it determines it can meet the required government petition deadlines. OIE will confer with the Sponsoring Department regarding such cases it will not be able to handle.

The OIE will confer with the Department Chair and Dean before making a recommendation for retaining outside counsel through appropriate institutional administrative channels. Only outside counsel that has been approved in accordance with the Texas Attorney General procedures for retention of outside counsel to represent state entities if will be utilized. **The Sponsoring Department will be responsible for the payment of any legal fees incurred in hiring legal counsel to represent the university in filing of immigration documents. It may seek reimbursement from the beneficiary if authorized by law.**

A private attorney must not be engaged to represent any UT System institution in any nonimmigrant or immigrant petition or application unless approved by the Office of General Counsel in accordance with procedures established by the Texas Attorney General. An individual employee may engage counsel at any time to represent his or her own interest, provided such representation does not relate to any legal interest of the University.

UT System institution administrators and faculty member are not authorized to sign any form

(i.e. G-28) that designates an attorney to assist, advise or represent the University in the preparation and submission of employer-based petitions or documents unless all approvals, including approvals of the Texas Attorney General's Office have been obtained in accordance with this policy.

**Use of Outside Counsel through
UT System Office of General Counsel**

1. OIE will choose one or more of Attorneys from attached list
2. OIE will obtain written approval from Provost to use outside counsel and identify funding source.
3. Submit "Request to Retain" to UT System Office of General Counsel for each law firm selected. OGC submits completed request form to Office of Attorney General (OAG)
4. Approval from OAG required before entering into contract with attorney
5. OGC sends contract to attorney for signature. Signed contract returned to OGC for signature. OGC submits contract to OAG for approval.
6. After contract approval, institution may contact attorney. Request is initiated by OIE and all fees are paid by hiring department. Contract has a maximum liability (monetary cap). Institution can continue using the attorney until the cap is reached, after which a new contract is required.
7. The university may use the same attorney for multiple cases up to a specific fee.

DISCLAIMER

***The Information contained in this handout should not be construed as legal advice,
but is intended for the general, informational use by
The University of Texas at Arlington community members.***