

EMPLOYMENT BASED GREEN CARD

A SEQUENTIAL 4 STEP PROCESS

As an employer, WOU has the opportunity to pursue employment-based permanent residence status for teaching faculty who the university intends to retain beyond three years. Sponsorship for permanent residence or a “green card” requires a significant commitment of University resources. The University will work with governmental agencies that have responsibility for administering and regulating this immigration process such as the Department of Homeland Security (DHS), Department of State (DOS), US Department of Labor) DOL and US Citizenship and Immigration Services (USCIS). Applying for permanent residency involves multiple steps and can take years to obtain. The University cannot predict or control the outcome or the amount of time it takes to obtain permanent residence.

Note: Only the Provost can approve requests for sponsorship, and no commitments to sponsor international faculty for permanent residence may be made without prior approval from the Provost’s Office.

STEP 1 – DOL Labor Certification

Generally, the sponsoring employer must submit materials, using the DOL’s PERM system, documenting its recruitment efforts and the fact that no qualified American citizen or permanent resident was available to fill the position. Fortunately, an alternative process has been established for college and university teachers. This process is called “Special Handling.” The most significant benefit of the Special Handling process is that university employers are only required to demonstrate that the alien applicant was *more* qualified than other applicants, not that they were the only qualified applicant. WOU will generally use the Special Handling process to obtain the required Labor Certification.

What is PERM Special Handling?

- An application filed with the U.S. Department of Labor that is the first step in a 3 step process for U.S. permanent residency (green card).
- Limited to college or university positions where job duties include classroom instruction. Teaching does not have to be the only job function, or even the primary job function. However, some teaching must be a requirement of the position.
- Purpose is to document a good faith recruitment was made and that no U.S. worker was found more qualified than the foreign national.

IMPORTANT NOTE: The recruitment requirements for PERM Special Handling should be followed in any hiring action where foreign applicants may be considered. It is difficult and costly to address errors and omissions in the recruitment process after the employee has already been selected.

The following recruitment steps are required and must be documented to support the Special Handling Labor Certification application for a teaching faculty member:

- ❖ Approval to fill a position must be obtained through the usual process. The Division Chair, Dean and Provost must participate in the recommendation and approval process for all requests with special awareness that the recruitment is open to foreign nationals who may qualify for this sponsorship.
- ❖ The HR Office will work with the Division and Department to ensure that the required advertising for the position is completed. The required advertising includes:
 - An advertisement for the teaching position must be placed a journal of national circulation likely to produce qualified applicants such as the Chronicle of Higher education, or another professional journal appropriate to the field. The ad must appear in PRINT. Online ads are not acceptable to the DOL.
 - The ad must list
 - the job title,
 - job requirements and description,
 - must make it clear that the job involves teaching,
 - must refer applicants to WOU with appropriate contact information,
 - must appear at least once, and the position must remain open for a sufficient period of time to permit qualified applicants to apply.
 - If All but Dissertation (ABD) is acceptable, then the ad must indicate that. The selected applicant must meet the minimum requirements at the time of selection.
 - The bargaining representative (if the position is covered by a Collective Bargaining Agreement) must also be notified.
- ❖ The job must also be posted internally for 10 business days in two locations using the printed Notice of Position Opening. One is posted on the first floor of the Administration Building and the other should be posted in the Division Office in a location that is used for general information or public notices and that can be easily accessed by current employees who may qualify for the job. When the notice is removed from the Division posting, note the removal date on the posting and include it with the other documentation submitted by the search committee to HR.
- ❖ After the recruitment steps are complete, the Division or Search Committee Chair should write
 - (1) a Recruitment and Selection Report describing in detail the recruitment efforts, the results and that the alien is the most qualified applicant as well as
 - (2) a statement of the faculty member's qualifications. The statements should be very detailed. They should be on WOU letterhead and should be signed by the Division Chair and Dean. The following details need to be included in the report and statement
 - Recruitment and Selection Report
 - Recruitment procedures:
 - Date and places of published advertisements;

- Dates and places of on-line advertisements;
- Dates and places of on-site recruiting at meetings or other universities;
- Dates and names of personal contacts (telephone calls, letters, etc.) with others in the field likely to know qualified applicants; and
- Similar documentation on other recruitment, if any.
- Selection procedures:
 - The total number of applicants considered by the search committee for the job opportunity;
 - The specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied for the job;
 - How and by whom applications were reviewed;
 - Which applicants were invited for interviews;
 - How and by whom (use names and titles) the interviewed applicants were evaluated;
 - How and by whom (use names and titles) the final decision to the faculty member was made; and
 - The date of the appointment letter.
- Statement of Faculty Member's Qualifications;
 - The degree and other academic credentials;
 - Nature and extent of publications and presentations;
 - How the faculty member will help meet the teaching and research goals of the Department; and
 - A confirmation that the faculty member is the most qualified of all the applicants for the position.
- ❖ The Division and Search Committee should submit the following documents to HR at the conclusion of the selection process:
 - The Recruitment and Selection Report;
 - Evidence of all other recruitment sources utilized outside those facilitated by HR;
 - The original division posting;
 - Copies of all search committee notes referring to the resumes/applications for the job;
 - Copy of the search committee notes referring to the faculty member's CV and educational documentation; and
 - Copy of the notes from the search committee referring to the job offer letter and contract.

Once the decision is made to sponsor the employee for permanent resident status, the following steps will be taken:

- ❖ The HR Office will provide:
 - All documents associated with the recruitment; and
 - Copy of the signed offer and contract letter.
- ❖ HR will obtain a prevailing wage from the Department of Labor.
- ❖ HR will then prepare the application (ETA Form 9089) and file it electronically with the U.S. DOL. Processing will take approximately 6 to 12 months once submitted unless the application is audited

by the DOL. In this case, processing time can increase to as much as 2 years or more. If the application is certified, WOU can then sponsor the faculty member with U.S. Citizenship & Immigration services.

Please note that HR must process the application. Use of an outside attorney to represent WOU is not allowed unless permission is received from the Provost. The employee may hire an attorney, at her expense, to represent her interests; however, that attorney does not represent WOU.

NOTE: If the 18-month deadline is not met or if all the required recruitment steps were not followed, it will be necessary to re-recruit for the position.

STEP 2

After WOU receives confirmation that the Application for Permanent Employment Certification has been approved, the University begins the process of filing a Petition for Immigrant Worker, Form I-140 petition on behalf of the employee.

It is the University's responsibility to file the I-140 petition, including paying all fees and submission of all required documentation. The documentation required is:

- Completed Form I-140.
- The original certified PERM Labor Certification.
- Filing fee of \$580 by check or money order made payable to the relevant USCIS regional Service Center.
- Documents demonstrating that alien is qualified and meets the position requirements as laid out in the Labor Certification. These include qualifying degrees, certificates, licenses, etc. and "experience letters" from previous employers. The experience letters should be on company letterhead and describe with specificity the duties of the former position.
- A letter (most often the Offer Letter) indicating the University's intention to employ the employee in a "permanent position."
- A letter from the WOU Vice President of Finance and Administration that establishes WOU's ability to pay the employee's wages.

*Note: At this stage no documents required for the family member of the sponsored applicant .

The University must indicate whether the beneficiary will apply for "consular processing" at an American Consulate overseas for an immigrant visa or will apply for adjustment of status (AOS or I-485) to permanent residence with the INS. The Application to Register Permanent Residence or Adjust Status, Form I-485 is usually submitted at this time.

The USCIS will issue a Receipt Notice and assign a file number after receipt of the I-140. The processing time taken by the USCIS to issue an Approval Notice varies, and can be several months.

If the USCIS accepts your petition then an Approval Notice will be issued. This means your I-140 has been approved.

An approved I-140 petition does not change the employee's nonimmigrant status.

STEP 3

The employee is eligible to file I-485 (adjustment of status) application by submitting the Receipt Notice of the pending I-140 with the I-485 application. Additionally, applications for Employment Authorization (EAD) and Advance Parole may be filed with the I-485 application. Family members (spouse, children) can also file I-485 at this time.

STEP 4

The employee will get the stamping in his/her passport and receive the plastic card.

NOTE: The overall process is time consuming, as it involves formalities and lot of paper work. It is granted against per year Quota/per country/per category. Another constraint is that a person applying for a green card generally needs to stick with the company, through which his/her green card is getting processed, till he gets his green card. Otherwise he generally loses the process, and needs to apply for a fresh application from the beginning.