

# Employment-based Permanent Residence Process for the Permanent Employment of International Academic Appointees and Staff

*Office of International Services, Indiana University*  
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In order to ensure compliance with federal immigration and employment requirements, the university has established policies and procedures to be followed for university-sponsored immigration petitions. The policies identify which petitions will be handled by the appropriate university offices following centralized university procedures.

## **Petitions for Employment in the United States**

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### ***Petitions for Initial or Temporary Status***

Most international academic appointees and staff will first require the visa-immigration services of the appropriate international office in order to enable the individual to begin employment at IU in an appropriate non-immigrant visa status. Petitions for temporary employment (H-1B, TN, O-1, J-1) are prepared by the international office providing those services to the hiring campus. See the next section of this document for an explanation of the division of service responsibilities among the university's international offices as they relate to initial or temporary immigration petitions.

### ***Petitions for Permanent Residency (Green Card) Status***

International employees who do not have U.S. citizenship or permanent resident (PR) status and who wish to apply for PR status based on their employment at IU must work with the Bloomington Office of International Services (OIS) to begin the employment-sponsored permanent residence review process. In order to pursue permanent residency, the applicant's position must meet certain minimum requirements. Employment-based petitions for a green card are time-consuming and complex. The staff at OIS provides comprehensive advising to departments and their employees on how to best achieve long-term employment goals.

### ***Self-Petitioned Applications for Permanent Residency Status***

Employment-based, self-petition applications such as the National Interest Waiver or the Alien of Extraordinary Ability petitions are not based directly on IU employment

and are generally not processed by the university. OIS should be consulted if an individual requires assistance with such applications to determine if a referral to OVPGC will be made. The university does not advise on family-based PR petitions.

## **University Offices Involved with IU Sponsored PR Petitions** \_\_\_\_\_

The following division of service responsibilities has been established:

**Bloomington Office of International Services (OIS).** Provides all services related to *temporary* work petitions for international academic appointees and staff for all campuses not supported by OIA (below). These services include H-1B, O-1, J-1, E-3 and TN advising.

Provides services related to university-sponsored permanent residency cases for *all* IU campuses, including centralized retention of documentation for Labor Certification applications filed on behalf of the university.

**IUPUI Office of International Affairs (OIA).** Provides all services related to *temporary* visa petitions for international academic appointees and staff at IUPUI, IUPUC, and the Medical Education Centers throughout the state. The status types handled by OIA include H-1B, O-1, J-1 and TN.

**Office of the Vice President and General Counsel (OVPGC).** Establishes policies and guidelines concerning the use of outside counsel for institutional matters relating to employment-based permanent residency applications, including the process of selecting attorneys to represent the university's interests in these matters. Collaborates with OIS and OIA to provide immigration services as needed to university employees. Processes standard labor certification cases upon referral by OIS.

**Human Resource, Academic Affairs, and Affirmative Action Offices.** Upon notice from OIS that an employee has been assigned to OVPGC to pursue permanent residence via a standard labor certification, these offices will assist the employing department with issues related to the original position listing and to the labor test required for labor certification and will assure that relevant IU and federal guidelines are met. These offices are also responsible for position classification and for determining whether or not a position is considered temporary by IU.

**Hiring Unit.** The hiring unit is the primary office responsible for moving the PR process forward for an international employee. If the unit wishes to pursue PR for an employee, unit staff will submit an e-form via iStart to OIS which includes approval by the head of the hiring unit. The unit head's formal approval presumes concurrence of the head of the relevant responsibility center. The hiring unit provides employer-related documentation in support of the PR process and works with OIS or OVPGC and the appropriate university human resources office.

## **Guiding Principles and Practices**

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### *Initial Request for Permanent Residency*

1. All employment-based PR requests for IU academic appointees and professional staff must be routed through the Bloomington Office of International Services. Individual employees and departments may not work independently with an outside attorney in cases involving a university-sponsored petition unless directly referred by OVPGC.
2. International employees in positions defined as temporary by IU are not eligible for an employment-based petition for permanent residency.
3. The hiring unit should not promise permanent residency to an international employee as the process is complex, lengthy, and inherently uncertain.
4. The request to pursue employment-based permanent residency must be approved by both the department chair or director and the head of the relevant responsibility center on campus. If desired, individual units may set their own criteria for support of the PR process that are more stringent than the minimum university guidelines as outlined in this document.
5. OIS will coordinate information sessions on the university-sponsored, employment-based permanent residency process. The sessions will outline the PR process and requirements in detail. Applicants, departmental supervisors, and HR liaisons are strongly encouraged to attend one of these sessions.
6. OIS provides an e-form via iStart for department representatives to request a review of the candidate's qualifications for pursuing IU sponsored permanent residency. Based on information provided in this initial request, OIS will first determine if the individual and position meet minimum university requirements for sponsorship. If these requirements are met, OIS will determine whether the petition will be handled internally by OIS, or whether it will be referred to OVPGC.

7. All documentation in support of a petition for permanent residency, academic and professional appointments alike, must reside with the Bloomington Office of International Services for a period of 5 years from the date of filing the petition. This includes all application materials submitted in response to a labor test.
8. The hiring unit should be aware that depending on the specific type of employment-based PR petition filed, all applicant CVs for the position in question may be required for submission to OIS to comply with Department of Labor requirements. If a department is considering the possibility of permanent residency sponsorship, it should consult with OIS before discarding any applications for the position in question.

*Petitions Processed by the Office of International Services*

The hiring department will be required to pay fees associated with Special Handling Labor Certifications or Outstanding Professor Researcher petitions.

9. OIS will handle applications for individuals who meet the following qualifications (part of what federal regulations refer to as Special Handling): (a) the position must be formally designated a clinical professor in a medical field or must require the teaching of a classroom course listed in the official IU schedule of classes with the individual as instructor of record; (b) the **original letter of offer** to the incumbent must carry a date not more than 15 months before the initial request for PR; and (c) the recruitment process that resulted in the offer made to the incumbent must have included a **print** ad in a national journal documenting the position title, duties, and requirements. The hiring department will be charged a \$1500 fee for processing and filing the Special Handling Labor Certification. Academic teaching positions that do not meet requirements *a* through *c* will be referred to OVPGC for the filing of a Standard Labor Certification.
10. Applications for faculty and researchers who meet the criteria for *Outstanding Professor or Researcher* as defined by the Department of Homeland Security will also be processed directly by OIS. OIS will determine if an applicant meets the criteria for the Outstanding Professor/Researcher petition. To qualify, scholars must document that they are recognized internationally as outstanding in a specific academic area. Federal guidelines for documentation of Outstanding status are rigorous and include (but are not limited to) the ability to demonstrate three years of experience in the academic field, proof of international recognition of one's research, recipient of major awards in the field, invited memberships in professional organizations, significant original research demonstrated by published books, multiple journal articles as primary author and patents, and professional

opportunities to judge the work of others in the field. The hiring department will be charged a \$2000 fee for processing and filing the Outstanding Professor or Researcher petition.

11. The hiring department or employee will be required to pay all USCIS filing fees associated with the petition.

*Petitions Processed by Office of the Vice President and General Counsel*

12. The head of the hiring department and international employee must sign a mutual consent agreement and conflict of interest disclosure.
13. All petitions other than those described in 9 and 10 above will be processed by OVPGC. This includes teaching positions with no print ad in the original recruitment or with job offers older than fifteen months. OVPGC will also handle applications for non-teaching positions unless OIS determines that the employee qualifies for the Outstanding Professor-Researcher designation.
14. The hiring department will be responsible for all advertising fees associated with the filing of the Labor Certification.
15. The Associate Director of Scholar Services of OIS will sign all attorney representation G-28 forms that enable designated legal counsel to work in support of an institutional petition.
16. OIS must review and the OIS Associate Director of Scholar Services must sign the immigration petition (I-140) before it is submitted for processing by USCIS.
17. Self-petitions that do not require university support (National Interest Waiver and Alien of Extraordinary Ability) may be pursued with any outside legal counsel, but guidance will not be provided by IU.
18. OVPGC will assist the international employee with the filing of the I-485 petition to request change of status to permanent resident status after the I-140 is approved. The employee will be responsible for all USCIS petition fees. Employees may also choose to file the I-485 on their own or choose their own legal counsel.

## Case-specific Policies

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### *Positions with Teaching Responsibilities*

1. Position must be full-time.
2. Position must meet one of these conditions: (a) requires classroom teaching in an official course with a course number in the IU or IUPUI schedule of classes. The applicant must be listed as the instructor of record for the course. Or (b) it is a position designated Clinical Professor in a medical school of Indiana University.
3. Position must be defined as permanent by IU. A permanent position is one that does not have a definite termination point defined either by a date or the completion of a project or assignment, is not seasonal or intermittent, and is not presently intended or contemplated by the employer to have some specified end date in the future. Positions designated “post-doctoral” are not considered permanent positions.
4. The position must have been advertised in **print** in a **national journal** and include position title, duties, and requirements.
5. The **original offer** letter must be dated within the last 15 months to allow OIS to complete the required verification process in time to meet federal requirements.
6. The head of the employing unit and the head of the relevant Responsibility Center must approve the request to have OIS review the position for PR eligibility.
7. For classroom teaching positions, the initial request for permanent residency may be undertaken as soon as a candidate has accepted IU employment. Because of the tight deadlines for Special Handling, it is wise to begin the PR process as soon as possible. However, no formal submission may be made for labor certification (the first part of the PR process) until the applicant has been formally hired in the IU HRMS system.

*Academic and Professional Positions with No Required Classroom Responsibility*

1. Position must be full-time.
2. Position must carry an HRMS salary plan code beginning APA or AAC. Certain support staff and research assistant positions do not qualify.
3. Position must be defined as permanent by IU. A permanent position is one that does not have a definite termination point defined either by a date or the completion of a project or assignment, is not seasonal or intermittent, and is not presently intended or contemplated by the employer to have some specified end date in the future. Positions designated “post-doctoral” are not considered permanent positions.
4. The applicant must have been in the current position, or in an IU position closely related to the current position, for a full year before the initial request is submitted. Clinical faculty, research professorships (assistant, associate, and senior), and tenure-track non-teaching academic appointees are not subject to this twelve-month rule, but the PR application process cannot be moved forward until these individuals have been formally hired in the HRMS system. An exception may be made if the international employee is nearing the end of eligible non-immigrant visa status.
5. The employing unit must have at least 36 months of expected funding for the position being held by the international employee as verified by the head of the hiring unit and head of the appropriate responsibility center in the initial request process. If a position is funded by a grant, then it is considered permanent only if the university is committed to continuing employment of the incumbent even if the grant funding ceases.

The fee schedule below applies to requests for Permanent Resident status. Fees are assessed both for processing and application filing.

Application Type	Fee Amount
Special Handling Labor Certification filed by OIS I-140 petition filed after Labor Certification approval	\$1500 payable to OIS* \$580 payable to Dept of Homeland Security**
Outstanding Professor or Researcher petition filed by OIS I-140 petition	\$2000 payable to OIS* \$580 payable to Dept of Homeland Security**
Standard Labor Certification filed by OVPGC	advertising fees*
I-140 filed after Labor Certification approval	\$580 payable to Dept of Homeland Security **
I-485 Application to adjust to Permanent Resident statuspetition	\$1070 payable to Dept of Homeland Security** (additional fees for dependents)

\*Hiring department required to pay this fee, effective January 1, 2009.

\*\*International employee or hiring department can pay this fee.