

# Immigration-Related Petitions and the Use of Outside Counsel 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 international office, which ones must be referred to outside attorneys following centralized university procedures, and which petitions are made outside of 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. Petitions for temporary employment (H-1B, TN, O-1, J-1) are generally not referred to outside counsel and must be 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 residency (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). 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 they can best achieve their long-term employment goals.

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

The university cannot advise on and will not become involved with applications whereby IU employees apply for permanent resident status on their own. Such applications include PR petitions based on family ties or on the categories of National Interest Waiver or Alien of Extraordinary Ability. These applications are not based on IU employment, and individuals are free to pursue them. However, even though the applicant may be an IU employee, Indiana University does not sponsor, nor sign, these applications. If individuals require outside assistance with such applications, they must consult an attorney. In accordance with the policies of Indiana University's Office of Financial Management Services, the employing unit may not pay for such personal petitions unless they are able to demonstrate that the petition is in the best interests of the employing department. Furthermore, in accordance with the policies of the University Counsel's office, the IU employing unit may not contract outside attorneys to provide such services for their employees.

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

The following division of service responsibilities has been established:

**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. See: <http://www.iupui.edu/~oia/>

#### **Bloomington Office of International Services (OIS).**

1. Provides the services related to *temporary* work petitions for international academic appointees and staff for all campuses not supported by OIA (above). These services include H-1B, O-1, J-1, and TN advising.
2. Provides services related to university-sponsored permanent residency cases for *all* IU campuses, including centralized retention of documentation for Labor Certifications filed by outside counsel. See: <http://www.indiana.edu/~intlser/>

**University Counsel's Office.** 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.

**Human Resource, Academic Affairs, and Affirmative Action Offices.** Upon notice

from OIS that an employee has been assigned to an outside attorney to pursue permanent residency, 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 need to facilitate completion of the on-line initial request form, and direct it to the head of the unit for approval. The unit head's formal approval presumes concurrence of the head of the relevant responsibility center. The hiring unit also provides employer-related documentation in support of the PR process and acts as liaison between the outside attorney 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.
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 offer information sessions on the permanent residency process. The sessions will outline the PR process and PR requirements in detail. Applicants and their departmental supervisor and HR liaison are strongly encouraged to attend

one of these sessions.

6. OIS provides an online form 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 a designated outside attorney.
7. Only attorneys authorized by the Indiana University General Counsel's office and formally referred by OIS may be used by departments wishing to sponsor an employee for PR.
8. 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.
9. 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.

10. OIS will handle applications for individuals who meet the following qualifications (part of what federal regulations refer to as ASpecial 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 offering that position 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. Academic positions that do not meet requirements *a* through *c* will be referred to university- approved

outside counsel. The hiring department will be charged a \$1500 fee for processing and filing the Special Handling Labor Certification.

11. 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 has a strong case for the Outstanding Application. 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.
12. The hiring department or employee will be required to pay all advertising and federal filing fees associated with the petition.

*Petitions Processed by Designated Outside Counsel*

13. All petitions other than those described in 10 and 11 above will be processed by approved outside attorneys. This includes teaching positions with no print ad in the original recruitment or with job offers older than fifteen months. Designated outside attorneys 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 fees assessed by outside counsel for processing and filing of the Labor Certification and for all advertising fees.
15. The director of OIS will sign all outside 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 director must sign the immigration petition (I-140) before it is submitted for processing by federal authorities.
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.

## 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 a national print journal or publication. The U.S. Department of Labor will not accept electronic national professional journal ads, except in conjunction with printed national recruitment efforts.
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. OIS will not review the online intake form until department approval and all supporting documents are received.
8. 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 IU positions 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.
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* \$475 payable to USCIS**
Outstanding Professor or Researcher petition filed by OIS I-140 petition	\$2000 payable to OIS* \$475 payable to USCIS**
Standard Labor Certification filed by university appointed attorney (Includes readvertising fees and attorney fees)	\$1000-\$3000 varies by case payable to appointed attorney***
I-140 filed after Labor Certification approval	\$475 payable to USCIS plus attorney processing fees**
Application to adjust to Permanent Resident status I-485 petition	\$1010 payable to USCIS** additional fees for dependents

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

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

\*\*\*Hiring department required to pay this fee.