U.S. Permanent Residence (Green Card) Sponsorship for Permanent Full-time Teaching Faculty Position Using Special Handling Procedure in the Permanent Labor Certification Process

Adapted from U.S. government website texts

Required by federal regulations, only permanent full-time positions are eligible for employment-based employer-sponsored U.S. permanent residence. Sponsorship for permanent residence must be made in the best interests of the university’s teaching and research needs. The decision to pursue permanent residence sponsorship for a FN employee is a serious and expensive undertaking and should not in any way be viewed as a gesture of good-will or undertaken to facilitate a FN’s personal desire for permanent residence. Approval of university PR sponsorship does not guarantee a PR petition, and PR petition does not guarantee USCIS approval and subsequent granting of PR status by USCIS.

U.S. employers are not required or obligated to sponsor PR for any foreign worker; it is the employer’s choice. If the employer chooses to sponsor a FN hired into an eligible position, the employer pays all costs. The U.S. Department of Labor (DOL) has strict rules which focus on protecting U.S. workers, that is, no minimally qualified U.S. workers are able to fill the position (with the exception of college/university teachers that the selected FN must be more qualified than U.S. workers.), the employment of a foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers, and the FN must have met all requirements (minimum and preferred if preferred was listed in the job ad) before the FN was hired into the position.

If an academic hiring unit expects/intends to hire and sponsor U.S. permanent residence (PR) for a foreign national (FN) in a university teacher position, please review the information below to know the relevant requirements to be prepared.

Overview of the Permanent Labor Certification Program

A permanent labor certification issued by the Department of Labor (DOL) allows an employer to hire a foreign worker to work permanently in the United States. Before the U.S. employer can submit an immigration petition to the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), the employer must obtain a certified labor certification application from the DOL's Employment and Training Administration (ETA). It must be certified that there are not sufficient U.S. workers (U.S. citizens and/or U.S. permanent residents/green card holders) able, willing, qualified and available to accept the job opportunity and that employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Qualifying Criteria

- There must be a bona fide, full-time permanent job opening available to U.S. workers.
- Job requirements must adhere to what is customarily required for the occupation in the U.S. and may not be tailored to the foreign worker's qualifications. In addition, the employer shall document that the job opportunity is described without unduly restrictive job requirements, unless adequately documented as arising from business necessity.
- The employer must pay at least the prevailing wage rate determined by DOL.

Process of Filing a Labor Certification

1. **Application.** The employer must complete an Application for Permanent Employment Certification (Labor Certification application), ETA Form 9089. A completed application will describe in detail the specific job title, job geographic location, job duties, educational requirements, training, experience, and other special skills the employee must possess to perform the work, and outline the foreign worker's qualifications. This application usually incurs a considerable processing time.

2. **Prevailing wage.** Prior to filing the ETA Form 9089, the employer must request and obtain a prevailing wage determination from the National Prevailing Wage Center (NPWC), which usually incurs a considerable processing time.

3. **Pre-Filing Recruitment Steps.** All employers filing the ETA Form 9089 must attest, in addition to a number of other conditions of employment, to having conducted recruitment prior to filing the application.

   The employer must prepare a recruitment report in which it categorizes the lawful job-related reasons for rejection of U.S. applicants and provides the number of U.S. applicants rejected in each category. The recruitment report does not have to identify the individual U.S. workers who applied for the job opportunity, however, if requested by DOL Certifying Officer, the employer must submit the resumes. Under 20 CFR §656.18 special recruitment and documentation procedures for college and university teachers, the following requirements must be met:

   (a) **Filing requirements.** Applications for certification of employment of college and university teachers must be filed by submitting a completed Application for Permanent Employment Certification form to DOL.

   (b) **Recruitment.** The employer must document the alien was selected for the job opportunity in a competitive recruitment and selection process through which the alien was found to be more qualified than any of the U.S. workers who applied for the job. Documentation of the “competitive recruitment and selection process” must include:

      (1) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, job geographic location, job duties, and requirements;
      (2) Evidence of all other recruitment sources utilized;
      (3) A statement, signed by an official who has actual hiring authority from the employer outlining in detail the complete recruitment procedures undertaken; and which must set forth:

         (i) The total number of applicants for the job opportunity;
         (ii) The specific lawful job-related reasons why the FN is more qualified than each U.S. worker who applied for the job.
(4) A final report of the faculty, student, and/or administrative body making the recommendation or selection of the FN, at the completion of the competitive recruitment and selection process; and
(5) A written statement attesting to the degree of the FN’s educational or professional qualifications and academic achievements.

(c) Time limit for filing. Applications for permanent alien labor certification for job opportunities as college and university teachers must be filed within 18 months after a selection is made pursuant to a competitive recruitment and selection process.

4. Audits/requests for information. The employer must provide the required supporting documentation when the employer's application is selected for audit or when the DOL Certifying Officer otherwise requests it.
5. Retention of records. The employer is required to retain copies of applications for permanent employment certification and all supporting documentation.

The process to obtain an employment based permanent labor certification can sometimes take up to several months after completing the necessary recruitment steps and filing the application with DOL. No expedite processing is available.

***Tips: if you expect/intend to hire and sponsor PR for a FN: retaining all recruitment documents including but not limited to: all published job ads and evidence/documentation of when and where they were published, all applicants’ CVs, and who were U.S. applicants (U.S. citizens and/or U.S. permanent residents [green card holders]), the lawful job-related reasons for rejection of U.S. applicants and the number of U.S. applicants rejected in each category, specific lawful job-related reasons why the FN is more qualified than each U.S. worker, etc.***

Special Handling Procedure for Permanent Full-Time College/University Teacher Positions

For permanent full-time college/university teacher positions at U.S. higher education institutions, DOL allows the college or university employer to select a FN who is more qualified than U.S. workers using its own competitive recruitment procedure, this procedure is known as “Special Handling” Labor Certification application procedure.

To be able to (1) use the expedient Special Handling procedure, (2) meet the federal government’s requirement for “competitive recruitment procedure,” and (3) save another recruitment effort in the event a FN who is more qualified than U.S. workers is selected and the hiring unit chooses to sponsor PR for the most qualified selected FN, International Programs reviews draft job advertisements for ALL permanent full-time tenured/tenure-track teaching faculty positions with actual classroom teaching duties prior to the job ads’ publication, typically with the job title of Assistant Professor, Associate Professor, or Full Professor.

Please note the most qualified selected FN MUST HAVE MET ALL MINIMUM AND PREFERRED QUALIFICATIONS BEFORE BEING HIRED INTO THE POSITION to be eligible for PR sponsorship in this category.

A FN ABD who needs an employer’s H-1B and PR sponsorship is not eligible for a position that requires a PhD degree; such individual must have possessed/held the required PhD degree before he/she was hired into the position in order to proceed to H-1B and PR sponsorship. Using the special handling Labor Certification procedure for college/university teachers for PR sponsorship purpose, a FN ABD must be more qualified than U.S. workers – that means the employer cannot proceed to PR sponsorship if there were U.S. applicants who have possessed/held the required PhD degree or as equally qualified as the FN ABD. Having possessed/held a PhD degree means a transcript showing the date the PhD degree was awarded/conferred and a PhD diploma. The common workaround for an ABD will not work for a FN ABD who needs to go through a relevant immigration process.