

PERMANENT RESIDENCY IN THE UNITED STATES (GREEN CARD)

I. Criteria for Lawful Permanent Residency (LPR) Sponsorship

The following criteria must be met in order to be eligible for AU sponsorship for U.S. Lawful Permanent Residency:

- A. **Faculty:** Full-time faculty members must hold faculty rank of Assistant Professor or above (tenure track faculty). Non-tenure track research faculty are eligible in rare circumstances. The faculty member must have been at AU in H1-B or TN visa classification for a minimum of one semester in order to be eligible for LPR sponsorship.
- B. **Post-Doctoral/Instructor Positions** are generally not eligible for LPR, given their temporary status.

II. Lawful Permanent Residency (LPR)—General Category Information

Certain employment-based permanent residency petitions require a job offer letter to be submitted from, or on behalf of, the University. Pursuant to University guidelines and policies, as well as Federal government regulations and requirements, **International Student and Scholar Services (ISSS) has the authority to determine whether to move forward with the filing of such petitions that require a job offer letter, according to the criteria stipulated below.**

NOTE: There are other employment-based petitions that do not require a job offer letter or employer sponsorship. With regard to these cases, the foreign national may choose to submit a petition on his/her own and/or with the assistance of an attorney, without any employer sponsor. However, even in these cases that do not require an employer sponsor, it is extremely important that ISSS is aware of the filing since it may have implications for the international's status within the United States and their ability to continue employment at Auburn University. It may also have tax liability implications for the University as well as for the individual.

Departments and/or individuals shall inform the Assistant Director of ISSS of the filing with United States Citizenship and Immigration Service (USCIS) of any of the following LPR preference categories for which ISSS has no responsibilities, since no employer sponsorship is required:

- A. **EB-1(A)** is for 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; **EB-1(C)** for multi-national executives and managers who have been employed outside of the United States for at least one year within the three years immediately preceding entry into the U.S. and are or will be employed in an executive or managerial capacity for that same employer or its subsidiary, branch, or affiliate in the U.S.;
- EB-2** (National Interest Waiver) is for aliens of exceptional ability in the sciences, arts, or business whose presence and activities in the U.S. are in the national interest.

ISSS must approve, sign, and submit petitions to the (USCIS) and, in some cases the Department of Labor (DOL), for the following LPR preference categories. Consideration may be given to the EB-1B provided the following criteria are met:

- B. **EB-1(B)** is for outstanding researchers and professors who are internationally recognized, have a minimum of three years of experience, and have been offered a tenured, tenure-track, or long-term research. No labor certification is required. *A copy of the job offer letter used to hire the employee is required. Applications are filed directly with the USCIS.*
- 1) The individual must have some percentile of teaching responsibilities.
 - 2) The advertisement for the position must have appeared in a PRINT ad in the Chronicle of Higher Ed or appropriate professional journal.
 - 3) The application must be submitted to the DOL within 18 months of the Date of the JOB OFFER

YOU MUST USE THE FOLLOWING CATEGORY FOR TENURE TRACK IF YOU MISS THE 18 MONTH WINDOW REQUIRED FOR EB-1(B)

- C. **EB-2** is for members of the professions holding advanced degrees or aliens of exceptional ability in the sciences, arts, or business. “Advanced 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. *Permanent Labor Certification and a copy of the job offer letter used to hire the employee are required.*
- 1) This can be for positions that require only a Bachelor’s or Master’s degree or for recent Ph.D. graduates.
 - 2) More extensive advertising is required. **See note on page 3 for specifics.**
 - 3) The department will be required to interview any individuals who are citizens or permanent residents who have the minimum requirements for the position.

NOTE: Generally AU does not approve the processing of LPR petitions until the person has completed a minimum of one semester of employment.

- 4) **EB-3** is for skilled workers, professionals, and other workers. It is also for professionals who do not hold advanced degrees, but who hold licenses, certificates, or other professional qualifications. *Permanent Labor Certification and a copy of the job offer letter used to hire the employee are required.* This is **VERY RARE AT AU and is not used for A & P, Staff, or Facilities.**

III. LPR Application Procedures

The following steps must be followed to be considered for sponsorship for U.S. LPR status by AU:

- A. The Department Chair/Head seeking to sponsor the foreign national should access the ISSS website and complete and forward all documentation indicated in the “Initiating an Application for Permanent Residency” form to ISSS, Attention: Assistant Director. (Form link and sample memo will go here later)

- B. Upon review of the foreign national's credentials and the University criteria for sponsorship, the ISSS will make a determination regarding whether or not the foreign national meets University and Federal guidelines for sponsorship. The ISSS will contact the Department Head to schedule an appointment between the foreign national, the faculty sponsor and/or dean's liaison to discuss the results of the review and the options available for the alien. Appeals regarding this determination may be submitted to the ISSS, as well as the Provost's Office who will make a final determination.
- C. Following the meeting the ISSS will prepare a report for the Department identifying the process that is most appropriate for LPR processing. The sponsoring department chair/head will prepare a memo thru their Dean to the Provost requesting approval to begin the process. The department will note in the memo that they understand that they will accept responsibility for all Labor Certification fees and associated attorney fees. Additional fees in excess of the cost of the Labor Certification must be paid by the individual. (See Paying for the LPR Case section below.)
- D. Following approval from the Provost and receipt of the documents noted in item #3, the sponsoring department and the foreign national will receive detailed instructions related to the selected process and may begin gathering and submitting all required forms and documentation pursuant to the preference category in which they will be applying.

IV. Specific Procedures for Cases Involving PERM (Permanent Electronic Review Management System) or Labor Certification (Only Required for EB-2)

- A. The first step in this permanent residence process is called "Labor Certification" and results in a certification from the U.S. Department of Labor (DOL) that there are no U.S. workers qualified and available to fill the position the alien will fill. This step requires the University to test the labor market for qualified U.S. workers. [All ads should go to the Provost Office for approval per standard recruitment procedure. They forward to AA/EEO.] If the University can demonstrate that no U.S. workers are available that meet the minimum entry requirements for the position for which labor certification is sought, then DOL will certify that a particular occupation may be filled on a "permanent" basis by a foreign worker. The University is under no obligation to hire a U.S. worker during the recruitment process, but a labor certification application cannot be filed with DOL if a qualified U.S. worker responds to the recruitment efforts. Also, the minimum job requirements cannot be tailored to meet the alien's qualifications and the alien generally cannot use "on-the-job" training towards meeting the minimum requirements. Although DOL claims that PERM applications will be processed in approximately 30 to 90 days after filing, the required pre-filing recruitment efforts to test the labor market for qualified U.S. workers are substantially more daunting than the prior system. A new prevailing wage must also be completed.

*******Note: Advertising Requirements for PERM cases---These requirements are mandatory for all applications involving professional occupations that are being filed under PERM standard processing, and they must be conducted at least 30 days, but not more than 180 days, before the filing of the application with the exception of number 4 listed below.**

- 1) 30 day State Workforce Agency (SWA) Job Order
- 2) 2 Print advertisements—One in a newspaper for two consecutive Sundays and one in a professional journal
- 3) Provide internal posting notices to departments—10 days (Provided by the ISSS)
- 4) Three separate additional recruitment steps out of a list of ten as follows:
 - a) job fair(s)
 - b) University's web site job opportunities pages
 - c) internet job search company/organization other than University's website
 - d) on-campus recruiting at local college or university
 - e) trade or professional organizations
 - f) private employment firms (e.g. headhunters)
 - g) employee referral program, if it includes identifiable incentives
 - h) a notice of the job opening at a local college/university campus placement office, if the job requires a degree but no experience
 - i) local and ethnic newspapers, to the extent that they are appropriate for the job opportunity
 - j) radio and television advertisements
- 5) After evaluating and interviewing U.S. applicants, the department must prepare a recruitment report describing its recruitment effort and results justifying why the U.S. applicants did not meet the minimum qualifications advertised. This is sent to the Provost Office who forwards it to ISSS after AA/EEO review.

- B. The second step in an employment-based permanent residence case is for the ISSS to file an Immigrant Petition for Alien Worker (Form I-140) along with the certified Form ETA 9089 with the U.S. Citizenship and Immigration Services (USCIS). This step is filed concurrently with the final step in most cases and currently is handled by Fisher & Phillips in Atlanta.

The remainder of the process is handled by the ISSS and the Employee in conjunction with Fisher & Phillips until the Green Card is obtained.

V. Paying for the LPR Case

Federal law requires that the University/sponsor pay for all petition costs associated with the Labor portion of a green card. Currently this is \$3000 here at AU. For each case, there is an additional charge of approximately \$3000. This additional \$3000 is paid by the employee UNLESS prior arrangements are made and discretionary monies used. No fees are paid for the portions of the bill that pertain to family members. It is the responsibility of each hiring department to make this perfectly clear to the employee when hiring a foreign national. This is taxable to the employee.

We currently use the services of Fisher & Phillips in Atlanta and no other law firms. Only the International Student and Scholar Services office is authorized to sign any immigration petitions on behalf of Auburn University. The petition is controlled by the University. The employee is the beneficiary of the petition. The University can elect to withdraw any immigration petition at any time for cause or due to cut backs in funding.