

# University-Sponsored, Employment-Based Permanent Residence Policy

## INT-06



### About This Policy

Effective Date:

11-01-2010

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05-16-2016

Responsible University Office:

Office of the Vice President for International Affairs

Responsible University Administrator:

Vice President for International Affairs

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[Scope](#)

University-wide hiring units, international academic or staff appointees, University Human Resource Services (UHRS), and Faculty and Academic Affairs.

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## Policy Statement

All University departments interested in hiring a foreign national for any position must coordinate exclusively with the UA-Office of International Services (OIS) for the Bloomington and regional campuses; or the Office of International Affairs for the IUPUI campus (OIA). This policy outlines the procedures necessary for the University to petition the federal government for Permanent Residence (PR), which is managed by the UA-Office of International Services.

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## Reason For Policy

In order to ensure compliance with federal immigration and employment requirements, the University has established policies and procedures to be followed for IU-sponsored immigration petitions. The policies identify which petitions will be handled by the appropriate University international office, which ones will be referred by OIS to the Office of the Vice President and General Counsel (OVPGC) following centralized procedures, and which petitions could be made outside of University procedures.

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## Procedure

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

#### 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 “University Offices Involved with IU Sponsored PR Petitions” below).

#### Petitions for Permanent Residence (Green Card) Status

Hiring departments seeking to sponsor international employees for PR status based on their employment at IU must work with the UA-Office of International Services (OIS) to begin the PR review process. OIS will review the case and make a recommendation to the hiring department regarding which route to permanent residence should be pursued. In order to pursue permanent residence, the applicant’s position must meet certain minimum requirements. Employment#based petitions for a green card are time consuming and complex. OIS, OIA, and OVPGC work together to provide comprehensive advising to departments and their employees on how they can best achieve their long#term employment goals.

#### Self Petitioned Applications for Permanent Residence Status

The University has organized employment-based immigration services around the needs of employing departments. Beyond their relationship with an IU employing department, international employees may have one or more personal bases from which to apply for PR status. Such applications include family-based PR petitions, National Interest Waiver self-petitions or Alien of Extraordinary Ability petitions. These applications are not based on IU employment, and while individuals are free to pursue them, 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 also able to demonstrate that the petition is in the best interests of the employing department. Furthermore, in accordance with the policies of the OVPGC, the IU employing unit may not contract outside attorneys to provide such services for their employees. OVPGC will consider exceptions to this section of the policy when it is in the University’s best interest.

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

The following division of service responsibilities has been established:

#### UA-Office of International Services (OIS)

<http://ois.iu.edu>

1. Provides the services related to temporary work petitions for international academic appointees and staff for all campuses except for IUPUI, IUPUC, and Medical Education Centers. These services include H#1B, O#1, J#1, E-3 and TN advising.
2. OIS coordinates the University-sponsored, employment based permanent residence process for all campuses, including the centralized retention of documentation for Labor Certifications filed by OVPGC. OIS will review and make a recommendation to the hiring department regarding which route to permanent residence should be pursued for an individual case.

#### IUPUI Office of International Affairs (OIA)

<http://international.iupui.edu>

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, E-3, and TN.

#### Office of the Vice President and General Counsel (OVPGC)

<http://www.indiana.edu/~vpgc/>

Establishes policies and guidelines concerning the use of outside counsel for University legal matters. Collaborates with OIS and OIA to provide immigration services as needed to University employees. Processes labor certification cases, adjustment of status, National Interest Waiver petitions, Conrad 30 Waivers, N-400 naturalization, and other immigration matters.

#### Human Resources, Academic Affairs, and Affirmative Action Offices

Upon notice from OIS that an employee has been assigned to OVPGC to pursue permanent residence, 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 permanent 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 via iStart (<https://istart.iu.edu>), 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 international office, attorney if applicable, and the appropriate University human resources office.

### **Guiding Principles and Practices**

#### Request for Permanent Residence

1. All employment#based PR requests for IU academic appointees and professional staff must be routed through the UA-Office of International Services.
2. Individual employees and departments may not work independently with an outside attorney in cases involving a University-sponsored petition unless directly referred by OVPGC.
3. International employees in positions defined as temporary by IU are not eligible for a University#sponsored petition for permanent residence.
4. The hiring unit should not promise permanent residence status to an international employee as the process is complex, lengthy, and inherently uncertain.
5. The request to pursue employment-based permanent residence 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.
6. OIS will coordinate information sessions on the permanent residence 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.

7. OIS provides an online form via iStart (<https://istart.iu.edu>) for department representatives to request a review of the candidate's qualifications for pursuing IU sponsored permanent residence. 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.
8. All documentation in support of a petition for permanent residence, academic and professional appointments alike, must reside with the UA-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 residence sponsorship, it should consult with OIS before discarding any applications for the position in question.

#### Petitions Processed by the UA-Office of International Services

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

10. *Special Handling Labor Certification.* OIS will handle applications for individuals who meet the following special handling requirements as per federal regulations: (a) the position must be formally designated as 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 been in compliance with IU policy ACA-77, **including a print ad and/or 30-day electronic or web-based advertisement in a national professional journal** documenting the position title, duties, and requirements. A national professional journal is a journal that circulates nationally, not just in a local area or region, e.g. The Chronicle of Higher Education. Electronic or online medium must also constitute a "national professional journal" and not just a compilation of job postings. A job website (e.g. monster.com) would not constitute a national professional journal. It must be a journal that contains articles as well as job listings. Academic positions that do not meet above requirements (a) through (c) will be referred to OVPGC for case processing. OIS will charge the hiring department a \$1,500 fee for processing and filing the Special Handling Labor Certification. Upon Labor Certification approval, the I-140 Immigrant Petition will be filed by OIS.
11. *Outstanding Professor or Researcher.* 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. OIS will charge the hiring department a \$2,000 fee for processing and filing the Outstanding Professor or Researcher I-140 petition.
12. The hiring department is required to pay all advertising costs associated with the PERM Labor Certification petition. The **USCIS I-140 filing fee** can be paid by either the international employee or the hiring department.

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

13. All petitions other than those described in 10 and 11 above will be processed by OVPGC. This includes teaching positions not in compliance with IU policy ACA-77 (no print ad or 30-day electronic or web-based advertisement in a national professional journal in the original recruitment that included position title, duties, and requirements) 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 head of the hiring department and international employee must sign a Limited Representation Agreement and Conflict of Interest Disclosure.
15. The hiring department will be responsible for all advertising fees associated with the filing of the Labor Certification.
16. The OIS Associate Director of Scholar Services will sign all attorney representation G#28 forms that enable designated legal counsel to work in support of an institutional petition.
17. 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 federal authorities.
18. Self-petitions that do not require University support may be pursued with outside legal counsel at the employee's expense.
19. OVPGC is available to 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 or concurrently filed with the I-140 petition, if eligible. Either the department or employee may pay the United States Citizenship and Immigration Services (USCIS) filing fees. Employees may choose to file the I-485 on their own or by engaging outside legal counsel at their expense.
20. Charges for each of these types of cases can be found on the OVPGC website at <http://www.indiana.edu/~vpgc/docs/Immigration/OVPGC-chargeback-immigration-rates-7-1-2015.1.pdf>

### **Case-specific Policies**

#### 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 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 compliance with IU policy ACA-77 regarding **print, electronic or web-based advertisement** in a **national professional 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 residence 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 PA or AC. 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.

### Fee Structure

In addition to the processing and filing fees indicated in this policy above, the **I-485 petition** to adjust to permanent resident status includes a USCIS filing fee that can be paid either by the international employee or by the hiring department.

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### Definitions

<https://ois.iu.edu/visas/faculty-visas/permanent/index.html>

<https://vpgc.iu.edu/our-services/immigration/index.html>

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### Sanctions

Labor Certification applications are subject to Department of Labor audits for a period of five years following the submission of the application. Improperly timed or filed PR applications could prevent or delay the employment of a foreign national.

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### Additional Contacts

Subject	Contact	Phone	Email
Policy-OVPIA	Christopher Viers	812-855-9086	cviers@iu.edu
OIS Scholar Services	Joanna Snyder	812-855-9086	snyder1@iu.edu
OVPGC	Frank Martinez	317-274-7455	frmarti@iu.edu

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### History

Policy established in 2005. Updated 2010. Revised 2014 to conform to current template for IU policies and to introduce changes in policy related to the addition of an in-house attorney in OVPGC specializing in immigration. Revised 2016 to align with changes to policy ACA-77, to clarify administrative procedures, and to include certain personal petitions among the types of cases handled by OVPGC.

Policy contacts and links updated 6-19-17.