



## GUIDELINES FOR SPONSORSHIP OF PERMANENT RESIDENCY

### Overview

A foreign national lawfully admitted to the United States as an immigrant is commonly referred to by different terms including immigrant, permanent resident, lawful permanent resident and green card holder. Immigration to the U.S. is dependent on category, country of birth, and visa number availability.

A foreign national may qualify for lawful permanent resident status through three avenues:

- **Public and humanitarian policy bases** for lawful permanent residents have been developed to meet the needs of refugees as well as accomplish public policy goals such as diversity.
- **Family-based sponsorship bases** require a close family member who is a U.S. citizen or lawful permanent resident to petition on behalf of the foreign national.
- **Employment-based qualifying categories** relate to the type of work that the foreign national will be performing in the United States, and usually require a U.S. employer to petition on behalf of the foreign national based on an offer of full-time, permanent employment. The U.S. Citizenship and Immigration Services provides a general overview of all employment-based permanent residence categories at <http://www.uscis.gov>. The USCIS Office of Business Liaison's Employer Information Bulletin 14 provides a summary of all employment-based permanent resident status categories at <http://www.uscis.gov/files/article/Bull14final110303.pdf>.

Applicants desiring to immigrate to the United States are generally divided in two major groups:

- Applicants who may obtain permanent residency without numerical limitation (includes "immediate relatives" of U.S. citizens); and
- Applicants subject to an annual numerical limitation (includes "refugees", "asylees", and family-based, and employment-based petitioners)

These categories are further divided by "preference" rank. For example, the family-based classification has four preference categories; the employment-based classification has five preference categories. Numerical limits of immigrant visas vary based on preference categories; the lower the preference category, the smaller the number of visas available to those applicants. Within this preference system, there are also annual limits on the number of immigrant visas issued to citizens of a particular country. Each country can receive only a maximum number of immigrant visas per year. Consequently, long waiting lists may develop if there are large numbers of applicants from a particular country.

The University of Texas Health Science Center at Houston (UTHSC-H) Office of International Affairs (OIA) is able to provide information and support to foreign nationals regarding employment-based permanent residency only. Due to the complexity of immigration laws and regulations and the involvement of many federal agencies in the immigration process, such as the Department of Homeland Security, the Department of Labor, and the Department of State, applicants are encouraged to contact qualified immigration attorneys for consultation and assistance with other permanent residency applications.

Current employment-based preference categories and numerical limits establish five general categories. However, some of those categories are not applicable to an academic environment. A **Summary of Employment-Based Categories for U.S. Permanent Residency Commonly Used in the Academic Environment** is available at:

[http://www.uth.tmc.edu/intlaffairs/Visas/documents/SummaryofEmploymentBasedCategoriesChart\\_000.pdf](http://www.uth.tmc.edu/intlaffairs/Visas/documents/SummaryofEmploymentBasedCategoriesChart_000.pdf)

Timelines for applications for permanent resident status based on employment-based preference categories are based on the category. For those categories most frequently used in the academic environment, the process is illustrated by the **Employment-Based Permanent Residency General Process Estimated Time Chart** at: <http://www.uth.tmc.edu/intlaffairs/Forms/forms.htm>

### **Employment-Based Permanent Residency Sponsorship**

Qualification for immigrant status in an “employment-based” category normally requires a permanent job or a job offer by an employer willing to sponsor the applicant. Sponsorship petitions may be filed by the employer or the employer’s attorney. Employment-based categories may be an option for sponsoring a non-immigrant foreign national for U.S. permanent resident status based on full-time UTHSC-H employment.

The UTHSC-H Office of International Affairs is the sole designee for signing all immigration applications on behalf of the institution. A determination whether to handle a case “in house” or to refer it to a private attorney is made on a case-by-case basis, depending upon variables such as type of case, level of expertise required, and employment category (ies) that provide(s) the best fit of individual qualifications, career achievements, current and history non-immigrant visa status, time allowance, terms of employment, etc. Review of available options is based on documentation and information provided by the nonimmigrant foreign national, followed by preliminary dialogue with the immediate supervisor who would support the permanent residency application.

Regardless of whether an attorney is hired to process the application, an individual seeking employment-based permanent resident status based on a permanent employment opportunity with UTHSC-H must comply with institutional policies; the Immigration petition document (Form I-140) must be signed by the Director of the Office of International Affairs or an OIA-designated staff member. Under no circumstances should an attorney be retained until the OIA Director has secured appropriate administrative written approval to sponsor an immigrant application.

Although the responsibility for filing an employment-based permanent resident status petition usually lies with the employer, in some cases the nonimmigrant may self-petition. Under this policy, OIA may prepare or coordinate preparation of permanent residency applications to be filed on behalf of foreign workers sponsored by UTHSC-H in the following employment-based categories:

- **Outstanding Professor and Researcher (EB-1): Immigrant Petition - Form I-140.** Immigrant petitions for “Outstanding Professors/Researchers” must be based on an offer of full-time “permanent” employment in a research and/or teaching capacity. The Form I-140 and

supporting documents may be prepared either by OIA or by a qualified immigration attorney hired and paid by the employee. In all cases, the Form I-140 must be signed by the OIA Director or OIA-designated staff member. The Director or designated staff member will prepare and/or sign the “Outstanding Professor/Researcher” Form I-140 petition provided the following conditions are met:

1. OIA has received written administrative approval signed by the department Chairman, division head, and Dean or higher officer authorizing institutional sponsorship.
2. The employee holds or has been offered a position as an Assistant Professor, Associate Professor, or Full Professor (either tenure track or non-tenure track research.)
3. The employing department provides a Sponsor Letter signed by the immediate supervisor and /or department head stating the applicant’s credentials and experience as they relate to the duties of the job to be performed.
4. The employing department provides an “Immigrant Visa Terms of Employment” letter stating the faculty job title and commensurate salary, and including the following text: “This offer is for an indefinite or unlimited duration and the beneficiary may expect continued employment unless there is good cause for termination.”

Appointment to a UTHSC-H faculty position is an indication that the individual’s skills are essential to the function of the institution and reflects an institutional intention to employ the individual contingent upon performance and/or availability of funding. A faculty position also helps to establish that the employee is recognized as outstanding in his/her field.

- **Registered Nurse or Physical Therapist (EB-2/3): Immigrant Petition - Form I-140.** Immigrant petitions for full-time foreign nurses and physical therapists who are already employed by UTHSC-H under a nonimmigrant visa may be prepared by the OIA or a qualified immigration attorney hired and paid by the employee. In all cases, the Form I-140 must be signed by the OIA Director or designee. The unavailability of immigrant visas in the third employment-based (EB-3) preference category may result in significant delays in obtaining U.S. permanent residency status and in some cases may interrupt employment with UTHSC-H.
- **Professionals holding advanced degrees or aliens of exceptional ability (EB-2): application for Permanent Labor Certification or PERM - Form ETA-9089 and Immigrant Petition - Form I-140,** unless applying for a national interest waiver, which may be a self-petition as it does not need employer sponsorship. Faculty or research staff who do not have research publications and/or other evidence of international recognition, and employees in positions that are deemed “difficult to fill” by UTHSC-H Human Resources, may need an application for Permanent Labor Certification (PERM) filed on their behalf as a first step towards obtaining employment-based immigrant status. Applications for PERM Labor Certification based on faculty, A&P, or “difficult to fill” positions at UTHSC-H will be referred on a case-by-case basis to outside counsel approved by System Administration Office of General Counsel. Whenever an attorney represents both UTHSC-H and the foreign worker, legal fees for the PERM case must be paid by the sponsoring UTHSC-H department. In addition, the sponsoring department must pay for the cost of advertising the position. The OIA Director will serve as liaison between the outside counsel, the employing department, and the employee. See the OIA website at <http://www.uth.tmc.edu/intlaffairs/Forms/forms.htm> for additional details regarding the PERM process and forms.

The UTHSC-H Office of International Affairs ***does not*** provide advice, prepare, or file applications for “adjustment of status” to that of a permanent resident of the U.S. (Form I-485.)

### **Option for International Visitors Not Eligible for Sponsorship Under UTHSC-H Policy**

UTHSC-H job titles that are considered temporary, and therefore inappropriate for employment-based permanent residency sponsorship, include, but are not limited to Postdoctoral Fellow, Medical Resident/Fellow (PGY 1-6), Visiting Professor, Visiting Scientist, Adjunct faculty titles, Graduate Assistant, and other student titles. Furthermore, UTHSC-H does not sponsor or support permanent residency applications for employees holding “Classified” job titles unless the position is deemed “difficult to fill” by both the sponsoring department and the UTHSC-H Human Resources Department. Unless there is a shortage of minimally qualified U.S. workers, such an application would be unsuccessful. A PERM labor certification is only granted by the Department of Labor after a finding there are not sufficient U.S. workers who are able, willing, qualified, and available to accept a particular position and that employing a foreign worker in the given occupation will not adversely affect the wages and working conditions of U.S. workers employed in that occupation.

Researchers and highly specialized individuals may be able to “self-sponsor” under certain employment-based immigrant categories based upon their own qualifications and accomplishments. They must establish that they have already made significant contributions to the field of specialization, are easily employed in that field, and/or that their presence in the U.S. is of national benefit. Individuals who wish to “self-petition” in an immigrant category that does not require a full-time, permanent offer of employment (e.g., “Alien of Extraordinary Ability, EB-1,” or “National Interest Waiver, EB-2”) should contact a qualified immigration attorney who will prepare the petition based on the qualifications and achievements of the employee. In such cases, the employee can sign the Form I-140. The OIA Director does not need to sign the Form I-140, and the UTHSC-H department need not provide a letter reflecting an offer of permanent, full-time employment. Employees who contract with a private attorney for this type of petition should inform OIA when the immigrant petition is filed, and when it is approved, provide OIA copies of the USCIS receipt and approval notice(s). Holders of temporary non-immigrants visas (e.g. F-1/F-2, J-1/J-2, TN, O-1) who have applications pending permanent resident status must be aware that visa status and tax residency status may be affected by the filing of an immigrant petition. Additional information may be obtained by consulting OIA and/or the Payroll Office and a qualified immigration attorney.

### **Adjustment of Status to Permanent Resident Alien (Form I-485)**

The final step in seeking status as a permanent resident of the U.S. is to either apply to the U.S. Citizenship and Immigration Services for “adjustment of status” on USCIS Form I-485 or to apply for the immigrant visa through Consular processing at the U.S. Consulate abroad - usually at the home country or country of last permanent residence. The foreign national is responsible for filing an application for adjustment of status with the Department of Homeland Security in the United States or for filing for an immigrant visa abroad with the Department of State. The employer has no legal standing in that process, except to provide the petition approval or receipt notice (USCIS Form I-797) and to confirm prior or offered employment. OIA does not assist individuals in preparing or filing this application. Applicants are strongly advised to contract with a qualified immigration attorney to prepare and file these applications on their behalf.

The I-485 may be filed concurrently with the I-140 immigrant visa petition or after approval of the I-140, contingent upon the availability of immigrant visa numbers in the employment based category

for which the I-140 is approved. (For information about immigrant visa number availability, visit the U.S. State Department web page at [http://www.travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://www.travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)). However, OIA only handles the filing of the I-140 petition. Individuals who plan to concurrently file Forms I-140 and I-485 must advise the Office of International Affairs so that OIA can coordinate this effort with the attorney selected and hired by the employee.

The I-485 application packet can be filed directly with the USCIS office that has jurisdiction over the applicant's place of residence. The proper mailing addresses are located in the I-485 packet. See [www.uscis.gov](http://www.uscis.gov) for filing instructions, forms and fees.

### **Resources**

Additional information and assistance may be obtained from The University of Texas Health Science Center at Houston Office of International Affairs by calling (713) 500-3176, e-mailing [utoiahouston@uth.tmc.edu](mailto:utoiahouston@uth.tmc.edu) or visiting the OIA web site at: <http://www.uth.tmc.edu/intlaffairs/Departments/Departments.htm>

To check on current availability of immigrant visas and processing times, see links from OIA web site at: <http://www.uth.tmc.edu/intlaffairs/Departments/Departments.htm>

**Summary of Employment Based Categories for U.S. Permanent Residency  
Commonly Used in the Academic Environment**

Subject to an annual numerical limitation, family and employment-based (EB) immigrants to the United States may obtain permanent residence status according to a hierarchy of "preferences." In the employment-based category there are at least four preferences; higher preference categories (as determined by Congress) have more visa numbers available (i.e. people of "extraordinary ability" vs. unskilled workers) and, in turn, within the preference system there is an annual number of immigrant visas allowed to any given country. Therefore, higher levels of immigration from a particular country might in a 'visa year' surpass the number of visas available in a given category within the preference system, thus creating in some cases long waiting lines.

<b>Category</b>	<b>Referred to as:</b>	<b>Eligibility Criteria to Qualify</b>	<b>Requires Permanent Job Offer</b>	<b>Comments</b>
<u><b>First Preference (EB-1)</b></u> <i>Priority Workers</i>	<b>"Extraordinary Ability"</b>	<ul style="list-style-type: none"> <li>Evidence of the above-normal ability and of having risen to the very top of the field of endeavor (Nobel Prize).</li> <li>Individual must meet at least 3 of 10 defined criteria.</li> </ul>	NO	Because it is the most selective category, fewer individuals qualify and the category is not usually oversubscribed.
	<b>Outstanding Professors and Researchers</b>	<ul style="list-style-type: none"> <li>Evidence of international recognition for outstanding academic achievements in a particular field.</li> <li>Individual must meet at least 2 of 6 defined criteria.</li> </ul>	YES	Less strict standard to meet but still not usually a category oversubscribed.
	Multinational Executives and Managers	Not commonly used in the academic environment		
<u><b>Second Preference (EB-2)</b></u> <i>Professionals with advanced degrees or with exceptional ability</i>	<b>Members of the professions holding an advanced degree</b>  <b>OR</b> <b>"National Interest Waiver"</b> Alien of <b>exceptional ability</b> in the sciences, arts, or business whose work is in the <b>national interest</b> of the U.S.	<ul style="list-style-type: none"> <li>Individual possesses Master's degree or above</li> <li>Job requires Master's degree or above</li> <li>Individual must meet at least 3 of 6 defined criteria.</li> <li>Requires approved Alien Labor Certification to show unavailability of U.S. worker to fill the position.</li> </ul>	YES	Alien Labor Certification adds a third step to the process. Requires DOL prevailing wage determination and involves lengthy and uncertain test of job market.
		<ul style="list-style-type: none"> <li>Evidence of significant contribution to the U.S. according to national interests. If the "national interest" standard is met, Alien Labor Certification is waived.</li> <li>Individual must meet extraordinary ability criteria.</li> </ul>	NO	
<b>Third Preference (EB-3)</b> <i>Skilled or Professional Workers</i>	<b>Professionals</b>	<ul style="list-style-type: none"> <li>Individual possesses baccalaureate degree or above</li> <li>Job requires baccalaureate degree as the minimum requirement to practice.</li> <li>Usually requires Alien Labor Certification.</li> <li>Alien Labor Certification waived for "shortage occupations" (such Registered Nurses and Occupational Therapists)</li> </ul>	YES	Registered Nurses and Physical Therapists must have a diploma and U.S. license to practice for a 'blanket' ALC approval.
	Skilled Workers	Minimum two years of training and experience	YES	<b>Long backlogs and therefore many years of expected waiting.</b>
	Unskilled Workers	Not relevant in the higher education academic environment		
Fourth and Fifth Preference (EB-4 / EB-5)	Special immigrants not designated for academic uses.			

Find detailed information at: <http://www.uscis.gov/greencard>



### Employment-Based Permanent Residency General Process Estimated Time Chart For categories commonly used at UTHSC-H

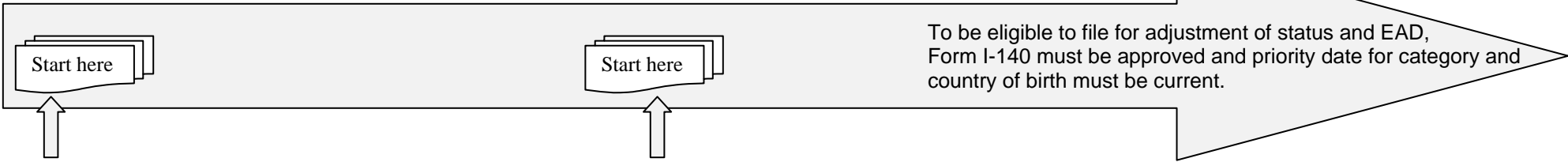
<b>Step I.</b> Permanent Labor Certification (PERM)  Pre-Filing Requirements Job offer, Prevailing wage, Job order 30 days-SWA Recruitment Doc. Retention file  <b>DOL / ETA          Form 9089</b>	<b>Step II.</b> Immigrant Petition for Alien Worker. Filed on behalf of an alien, and not by an alien  <b>USCIS          Form I-140</b>	<b>Step III.</b> OR	
		Application for Adjustment of Status <i>Inside the U.S.</i>  <b>USCIS          Form I-485</b>	Consular Processing <i>Outside the U.S.</i>  <b>USCIS          Form I-824</b>

1 to 6 months (preparation)

\*4 to 6 months

\*12 to 24 months

plus 2 to 12+ months (certification), -depending on backlogs and/or audit determination-



<b>2<sup>nd</sup> Preference (EB-2)</b> <ul style="list-style-type: none"> <li>Advanced Degree professionals (or equivalent) MS, PhD. or Exceptional Ability (higher degree of expertise)</li> </ul> <b>3<sup>rd</sup> Preference (EB-3)</b> <ul style="list-style-type: none"> <li>Professionals (BS)</li> <li>Skilled Workers (AS, Cert.) i.e. Clinical Faculty, Research Staff, Allied Health Staff</li> </ul>	<b>1<sup>st</sup> Preference (EB-1)</b> <ul style="list-style-type: none"> <li>Aliens of Extraordinary Ability in the sciences, arts, education, business, or athletics</li> <li>Outstanding Professors and Researchers i.e. Research Scientist, Instructor, Assistant professor, Associate Professor</li> </ul> <b>2<sup>nd</sup> Preference (EB-2)</b> <ul style="list-style-type: none"> <li>National Interest Waiver <b>ETA 750B</b> i.e. Research Associate</li> </ul> <b>2<sup>nd</sup> / 3<sup>rd</sup> Preference (EB-3)</b> <ul style="list-style-type: none"> <li>Nurses and Physical Therapists <b>Schedule A Blanket Cert. ETA 9089</b></li> </ul>
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\*To check on current processing times, availability of immigrant visas, or individual case status, see links from OIA web site

<http://www.uth.tmc.edu/intlaffairs/Departments/Departments.htm>