EMPLOYMENT-BASED PERMANENT RESIDENCE IN A NUTSHELL

U.S. immigration law has divided permanent residence (lawful permanent residence, or LPR) based on a job-offer in the United States into 5 classifications: first preference (EB-1); second preference (EB-2); third preference (EB-3); fourth preference (EB-4); and fifth preference (EB-5). Each classification has numerous requirements for establishing eligibility and several of the classifications are divided into several smaller divisions.

The first three of these classifications are relevant to positions at the University. Below is a summary of the criteria to establish eligibility within the second and third preference classifications. See separate documents for national interest waivers and first preference petitions.

Criteria to Establish Eligibility within the EB-2 LPR Classifications:

Advanced Degree Holders

Exceptional Ability in the Sciences Arts, or Business

EB-2: Advanced Degree Holder
[8 C.F.R.§204.5(k)(2) and (k)(3)(i)]

The LPR petition must include documentation to demonstrate that the job requires an advanced degree, and that the applicant possessed the required degree and any other minimum requirements at the time he or she began employment with UC Denver in that position. Documentation must include:

- An certified application for permanent labor certification or proof that the applicant's work is in the national interest.
- An official academic record showing that the applicant has a U.S. advanced degree or a foreign equivalent degree; or
- An official academic record showing that the applicant has a U.S. baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from the current or former employer showing that the applicant has at least five years of progressive post-baccalaureate experience in the specialty.
- The documents must match the requirements in the application for labor certification.

The USCIS decision on whether an applicant is qualified for advanced degree classification depends largely on how UCD describes the minimum requirements on the labor certification application. We must make sure that the labor certification application form clearly establishes that an advanced degree in a specific field (master's degree or higher) is required. If a baccalaureate degree plus 5 years post-
baccalaureate experience is an acceptable alternative to an advanced degree, UCD must clearly state that on the labor form.

**EB-2: Exceptional ability in the sciences, arts, or business**

[8 C.F.R.§204.5(k)(2) and (k)(3)(ii)]

To prove the USCIS standard of exceptional ability which shows that the applicant has “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business,” the LPR petition must include at least three of the following:

- An official academic record showing that the foreign national has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability
- Evidence in the form of a letter(s) from current or former employer(s) showing that the foreign national has at least ten years of full-time experience in the occupation for which he or she is being sought
- A license to practice the profession or certification for a particular profession or occupation
- Evidence that the foreign national has commanded a salary, or other remuneration for services, which demonstrates exceptional ability
- Evidence of membership in professional associations
- Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations
- If the above standards do not readily apply to the applicant’s occupation, we may submit comparable evidence to establish the applicant’s eligibility.
- A certified application for permanent foreign labor certification or evidence that the applicant’s work is in the national interest.
- Documentation to show that the employee meets the minimum requirements of the position, which must require the applicant’s exceptional ability.

**Criteria to Establish Eligibility within one of three EB-3 Classifications:**

**Professional with a Bachelor’s degree** 8 C.F.R.§205.5(l)(3)(ii)(C)

When filing for a professional with a bachelor’s degree, the petition must include:

- A certified application for permanent labor certification;
- Evidence that the applicant holds a U.S. baccalaureate degree or equivalent foreign degree; and
- Evidence that a baccalaureate degree is required for entry into the occupation.
- The evidence must show that the applicant meets all the requirements of the labor certification.
Criteria to Apply for Permanent Labor Certification

Professions Pre-Certified by USDOL

For certain occupations, the U.S. Department of Labor has determine that certain foreign workers do not adversely impact the U.S. workforce, because there are not enough U.S. workers who are able, willing, qualified, and available. The USCIS will determine whether UCD and the foreign national meet the requirements of Schedule A. If necessary, USCIS will consult with experts in the field. These permanent labor certification applications are submitted directly the USCIS with a completed labor certification application form, ETA-9089, and the other required documentation described below.

Schedule A Group I
For the occupations of Physical Therapists and Professional Nurses,
Physical Therapists must provide a letter or signed statement by an authorized state physical therapy licensing official stating that the individual is qualified to take the State’s licensing examination and must have a Visa Screen. [20 C.F.R.§656.22(c)(1)]

Professional Nurses must provide evidence that they have either passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination or that they hold a full and unrestricted (permanent) license to practice nursing in the state and must have a Visa Screen certificate. [20 C.F.R.§656.22(c)(2)]

Schedule A Group II
[20 C.F.R.§656.10(b)]
For applicants with exceptional ability in the sciences, the following evidence must be submitted with the form:

- Evidence of widespread acclaim and international recognition accorded to the foreign national by recognized experts in the field
- The foreign national’s work in the last year required exceptional ability and the foreign national’s intended work in the U.S. will require exceptional ability
- At least two of the following types of documentation:
  - Receipt of internationally recognized prizes or awards for excellence in the field
  - Membership in international associations in the field which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields
  - Published material in professional publications about the foreign national which relate to the individual’s work in the field, to include at least the title, date, and author
  - Evidence of acting as a judge of the work of others, either individually or on a panel
  - Evidence of original scientific or scholarly research contributions of major significance in the field
o Evidence of authorship of published scientific or scholarly articles in the field, in international professional journals or professional publications with an international circulation

o Evidence of the display of the foreign national’s work, in the field for which certification is sought, at artistic exhibitions in more than one country

**Permanent Labor Certification**  I.N.A.§212(a)(5)(A)

LPR petitions for second and third preference classifications must be filed with a certification from the Department of Labor, or with documentation to establish that the foreign national qualifies for one of the shortage occupations listed in Group I or II of the Department of Labor’s Schedule A, or, in second preference, that the person’s work is in the national interest.

**Basic labor certification** establishes that there are no U.S. workers who are able, willing, qualified, and available at the time and place where the foreign national is to be employed and that the employment of the foreign national, if qualified, will not adversely affect the wages and working conditions of similarly employed U.S. workers. After national recruitment, the foreign national must be the only applicant meeting the minimum qualifications who is able and willing to accept the position.

**Special handling labor certification for university teaching faculty** establishes that the foreign applicant is the most qualified person in the applicant pool after national recruitment conducted in accordance with Federal and University diversity requirements.

Application for certification is made by UCD/ISS filing form ETA 9089 electronically after required recruitment is complete and the foreign employee has been formally offered the position. The USDOL’s database will accept Form ETA-9089 from only from ISS, or from attorneys or agents that UCD has approved after ISS recommendation.