



University of Colorado Denver

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STEPS IN THE PROCESS OF APPLYING FOR U.S. PERMANENT RESIDENCE THROUGH EMPLOYMENT AT UC DENVER

DETERMINING WHETHER THE UNIVERSITY WILL SUPPORT THE APPLICATION

The first step is for the employing unit to determine whether the University is willing to commit the time and resources toward the permanent residence process. Institutional policy does not permit University applications for temporary positions such as postdoctoral fellows or visiting scholars. The position must be one of the University's regular, full-time positions.

Institutional policy also requires that all decisions about which applications will be filed be made by International Student Scholar Services, in consultation with the international faculty's or staff's department.

Finally, institutional policy does not permit the use of outside counsel to represent the University unless the attorney has been appointed Special Assistant Attorney General. Only one immigration law firm has been appointed to represent the campus in immigration matters: Robert Aronson, of Aronson and Associates, an immigration firm located in Minneapolis, Minnesota. Another immigration law firm has been approved to assist the campus in applications for permanent labor certification: Stern Elkind Curray & Alterman, LLC, an immigration firm located in Denver, Colorado. In order to use either law firm for a University application, it is necessary to first obtain permission from ISSS.

In order to start the process of discussing the various routes to permanent residence, the employing unit should schedule a meeting with an International Scholar Advisor, the international scholar, and the international scholar's immediate supervisor. Others may also be appropriate to attend this meeting, such as the departmental administrator responsible for employment matters.

THE FIRST STEP

The first step is for the University to choose the appropriate classification for the international faculty or staff person. The attached chart outlines the various types of employment-based classifications for which international faculty or staff could be eligible, based on their employment here. Most of our applications usually fall under the first or second employment-based preference categories.

The current Department of State Visa Bulletin explains all the possible classifications for employment-based permanent residence. See the following URL for the most current Bulletin:

http://www.travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

Labor Certification as First Step

For applications for permanent residence in the second and third preference categories, the first step in applying for permanent residence is usually an application for labor certification, Form ETA 9089. The attached chart shows which classifications require labor certification. Applications for labor certification are filed by the employer with the U.S. Department of Labor. Most applications for labor certification require a national search that meets U.S. Department of Labor criteria. Since these criteria are different from the usual University search requirements, in most cases, this often means that the position must be reopened, advertised, and the faculty or staff member must be the only qualified applicant. There is an exception for teaching faculty hired after a Diversity-Office approved national search.

Immigrant Petition to the USCIS without Labor Certification as First Step

For applications in the first preference categories, labor certification is not required. In some cases, second or third preference applications may be exempt from labor certification as well. In these cases, the first step is to file a petition for the classification directly with the U.S. Citizenship and Immigration Services, Form I-140. The attached chart compares the four situations for UCD faculty and staff in which an I-140 can be filed without prior labor certification. In some cases, the employee can self petition. In most categories, however, the employer must be the petitioner.

Priority Date and Availability of an Immigrant Visa

The first step, whichever it is, sets the “priority date” for the employee. The Visa Bulletin also explains the availability of immigrant visa numbers in each category and includes a chart of immigrant visa availability for the coming month. Because of the limit on the numbers of permanent residence that can be granted in each year, there are visa number backlogs in some of the employment-based classifications.

THE SECOND STEP

Immigrant Petition to USCIS after Labor Certification

If labor certification is required, once it is granted, the second step is for the University to file an immigrant petition, Form I-140, with the USCIS showing that the employee meets the qualifications set out in the application for labor certification.

Application for Permanent Residence after Approved I-140 Immigrant Petition with No Labor Certification

If no labor certification is required, once the I-140 Immigration petition is approved, the employee can file an application for permanent residence with the USCIS, **IF** there is a visa number immediately available. In some cases where an immigrant visa number is immediately available, it is advisable for the employee to file his or her application for adjustment of status to permanent residence at the same time.

THE APPLICATION FOR PERMANENT RESIDENCE: STEP TWO OR THREE

Adjustment of Status or Immigrant Visa Processing

If an immigrant visa is immediately available, the employee and his family members may be able to apply for “adjustment of status” to permanent residence through the USCIS, if eligible. All applicants for adjustment of status are also eligible to apply for permission to work and travel, independent of any nonimmigrant visa status they may hold as an employee of the University. The employee can also choose to ask to have an “immigrant visa” processed in the appropriate U.S. Consulate in her or his home country. This choice is best made at the time the I-140 is filed.

When no Visa Number Available

If there is no visa number immediately available, the petition will either be held by the USCIS Service Center where it was approved or forwarded to the U.S. Department of State National Visa Center, where it will be held until a visa number becomes available and the employee and his or her family are eligible to apply for an immigrant visa or adjustment of status. This could be several years.

International Student and Scholar Services can give general advice about applications for the final step—the employee’s permanent resident or immigrant visa application—but does not have the resources to prepare the applications. Employees are welcome to retain an immigration attorney to handle this final step in the process for them.

Please contact an International Scholar Advisor at 303-315-2230 if you have any questions about this process as it might apply to a particular international faculty or staff member.

Attachments: Options for Employment-Based Permanent Residence Based on UCD Employment Comparison of Criteria for I-140 Petitions not Requiring Labor Certification
Current Visa Bulletin