**Partnering with ISSS to Apply for Legal Permanent Residence**

Revised 10/19/2020

There are multiple pathways to legal permanent residence (LPR) in the U.S. These include family-based options, the diversity lottery, and employment-based options. ISSS provides assistance to hiring units who wish to sponsor an international employee in an employment-based category. A successful LPR process requires a collaborative effort among the employee’s supervisor, the Department Administrator, the international employee, and ISSS. For all cases initiated after January 1, 2020, outside counsel will be engaged by ISSS.

International employees seeking university sponsorship for employment-based legal permanent residence are required to work through their hiring unit – faculty supervisors and/or department administrators – to contact ISSS regarding sponsorship and to engage ISSS services. Hiring units may use the employment authority of the University of Colorado Denver to obtain permanent residence for foreign nationals only when that course of action is consistent with the University’s goals, programs, and standards, and is in compliance with U.S. immigration law and other applicable regulations.

At the University of Colorado Denver | Anschutz Medical Campus, ISSS in the Office of International Affairs is the only office authorized by the Chancellors to approve and either prepare or oversee all immigration paperwork for the university. This includes engaging and managing outside immigration counsel.

**When to Begin the LPR Process**

When recruiting an international faculty member at the Assistant Professor level or above or a high-level exempt professional at the Director level or above, the hiring unit may choose to extend sponsorship for employment-based permanent residency as part of the initial offer. Note, however, that you MUST consult with ISSS before you commit to sponsorship by the University of Colorado Denver. We need to assess the potential employee’s eligibility for employment-based permanent residency as well as provide guidance from the very beginning to ensure that the process goes as smoothly as possible. In most cases, it will be necessary to initially bring the faculty member to campus on a non-immigrant visa – usually an H1B, since it will take more than a year to obtain permanent residence. ISSS would be happy to meet with any candidates selected as finalists to discuss immigration-related issues, including the permanent residency process.

A foreign national may ask whether the University will sponsor them for permanent residency once they are an employee. A supervisor may also seek to sponsor a foreign national for permanent residency if an international employee has a unique skill set or if the supervisor sees that a long-term employment relationship is in the university’s best interest.

The request for sponsorship must be made by the hiring unit directly to ISSS, and not by the foreign national. A hiring unit should consider the following factors before requesting sponsorship:

1. The hiring unit’s confidence that funding for the international employee’s position will continue to be available;
2. The hiring unit’s willingness and ability to pay the costs associated with the permanent residency process (these could include advertising fees, USCIS filing fees, and attorney fees);
3. The hiring unit’s ability to dedicate administrative staff time and energy to the permanent residency process; and
4. Evidence of a commitment to a long-term employment relationship by both the hiring unit and the international employee.

University sponsorship of an employment-based petition may not be the international employee’s only pathway to legal permanent residence. If you are unsure about whether or not to request sponsorship of a foreign national, ISSS can help you and the international employee explore the alternatives and evaluate the risks and benefits associated with each option.

ISSS will make the final decision about whether university sponsorship is appropriate as well as the timing and category of such sponsorship. In some cases, it may be necessary to wait until an international employee has had the opportunity to strengthen his or her credentials or is being promoted to a “permanent” or higher-ranking position.

The international employee must hold a regular, full-time position to be eligible for employment-based permanent residency. The University will not sponsor employment-based applications for international employees holding temporary positions such as postdoctoral fellows or visiting international employees.

Determining the right time to apply depends on two primary factors:

1. Whether the international employee has a “permanent” position with the University that is at a high enough level to expect that they will reasonably remain in that position until they are able to adjust to permanent residency (given current backlogs for immigrant visas, this can be years); and
2. The visa status the international employee currently holds and the remaining eligibility time that they have in that status.

Most often, the employees whom the University sponsors for permanent residency are already in H-1B status. Unlike most non-immigrant visa categories, the H-1B visa category permits a foreign national to work in the U.S. with clear “immigrant intent” – the intention to remain in the U.S. permanently. A set of regulations entitled “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting Highly-Skilled Nonimmigrant Workers” went into effect on January 17, 2017. This rule provides for an extension of H1B status beyond the usual 6 year eligibility period as outlined below.

**One Year Extension of H1B Status**

8 CFR 214.2(h)(13)(iii)(D)

* An H1B employee is eligible for one year extensions of H1B status beyond the 6th year if the first step in the LPR process is submitted to the U.S. Department of Labor or filed with USCIS, depending on the category chosen, while the employee still has 365 days or more of H1B status remaining.
* An employee becomes ineligible for further extensions of their H1B status if they fail to file an Adjustment of Status application within one (1) year of their priority date becoming current.

**Three Year Extension of H1B Status**

8 CFR 214.2(h)(13)(iii)(E)

* An H1B employee is eligible for extensions of up to three (3) years beyond the 6th year if we have an approved I-140 and the person is unable to immediately adjust to permanent residency because no immigrant visa number is available.

The employment-based categories for which ISSS provides assistance are outlined in the table below.

**Options for Employment-Based Permanent Residence**

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| **Category** | **Appropriate For** | **Factors to Consider** |
| **Employment-Based First Preference**  **(EB-1)**  **Outstanding Professor or Researcher** | Professor or researcher who is recognized internationally as outstanding in their academic field, and who has at least 3 years of teaching or research experience in the field. | Employee must have a “permanent” job offer. Requires expert letters, documentation of publications, citations, evidence that employee has served as a judge of the work of others, etc. There are currently visa number backlogs for all first preference beneficiaries. |
| **Employment-Based Second Preference**  **(EB-2)**  **Advanced Degree Holder**  **(or Exceptional Ability in the Sciences, Arts, Business)**  **Basic Labor Certification or Special Handling Labor Certification for University Teachers** | Employees who hold at least a master’s degree (or a bachelor’s degree plus five years of progressive experience) in a position for which an advanced degree/bachelor’s degree and five years of experience is a minimum requirement. Employee must have been hired as a result of a national search that meets USDOL recruitment requirements. Appropriate for all faculty positions. The university does not sponsor classified staff positions or postdoctoral fellows. Sponsorship for Exempt Professionals is approved only on an exception basis. | The employee must have a permanent job offer at the University of Colorado Denver for a full-time position which requires an advanced degree or equivalent, unless the employee is of documentable exceptional ability. A faculty candidate with teaching responsibilities must be the MOST qualified applicant. A non-teaching candidate must be the ONLY qualified applicant willing and able to accept the position. Currently, there are significant visa number backlogs for those born in India and China. |

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| **Employment-Based Second Preference**  **(EB-2)**  **Persons with Advanced Degrees whose Work is in the National Interest** | Job offer and labor certification are waived. It is available to a scholar who has an advanced degree (master’s or higher), and can prove that her or his work is in an area of ***substantial intrinsic merit*** and that the proposed ***benefit*** of the employee's work is of ***national*** ***importance;*** that he or she is well positioned to advance the proposed endeavor; and that, ***on balance, it would be beneficial to the United States to waive the job offer and labor certification requirement***. | The employee can self-petition or the University can petition on behalf of the employee. Requires expert letters, personal statement, evidence of publications, citations, and other evidence to show that work is in the national interest of the U.S. |

**Length of Permanent Residency Process**

The length of time it takes to become a permanent resident depends on various factors. The three most important variables are: 1) where the international employee (or their spouse) was born; 2) the international employee’s level of education and years of professional experience; and 3) the international employee’s professional achievements. For example, depending on the category in which they apply, foreign nationals born in India and China may face significant delays (5 to 6 years, on average) in the second preference category because there is greater demand for permanent residency by individuals from these two countries. In contrast, foreign nationals born in other countries may be able to obtain permanent residency in the second preference category much more quickly.

Employment-based permanent residence can be either a two- or three-step process, depending on the category chosen. In an EB-2 category, the first step is generally proving to the US Department of Labor (USDOL) that there is no qualified US worker available to take the position. The National Interest Waiver is the only second-preference category that waives labor certification. The second step is the University’s petition to the U.S. Citizenship and Immigration Services (USCIS) to get the foreign national classified in the appropriate preference category. The third step is the foreign national’s personal application to adjust to permanent residence.

In some cases, only the first and second steps of the process can be completed right away; and the foreign national must wait for the third step, the application to adjust to permanent residence, until an immigrant visa is available. Neither the EB-1 categories nor National Interest Waivers in the EB-2 category require labor certification by the USDOL. The first step in these cases is the University’s I-140 petition to USCIS.

**Potential Costs Associated with the LPR Process**

Sponsoring an individual for lawful permanent residency based on employment can be expensive, although the actual cost will depend on the category chosen and other factors. U.S. law requires the employer to pay all costs associated with the labor certification process, including advertising and any legal fees. The hiring unit is expected to pay the filing fees for the I-140 petition, where the university is the petitioner. Employees may “self-petition” for two employment-based categories,1st preference Extraordinary Ability and 2nd preference National Interest Waivers. The hiring unit may choose to pay the costs for the final step of adjusting to permanent residency status or consular processing. If the foreign national chooses to self-petition, they are generally responsible for all costs.

***ISSS Services***

For all cases initiated after January 1, 2020, ISSS will engage outside immigration counsel to prepare and submit or file immigration paperwork for all steps of the permanent residency process. The hiring unit is responsible for paying the legal fees and costs, in addition to any advertising costs.

The Adjustment of Status (AOS) application and other associated applications (Forms I-485, I-765 application for work authorization, and I-131 application for travel authorization) are viewed as **individual applications**, and not applications prepared on behalf of or sponsored by the employer. This means that ISSS cannot assist employees in preparing these applications. We do not generally answer questions regarding the preparation of these applications; review documents or forms; or give advice on strategy or timing of AOS applications.

All I-140 employment-based adjustment of status applicants are also subject to an in-person interview as part of the adjustment process.

***Attorney’s Fees and Costs***

Although fees and costs may vary with the circumstances of individual cases, the amounts listed below are representative of the fees and costs an attorney will charge for these services. ISSS has negotiated set fees with the attorneys that we use.

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| **Service** | **Approximate Fee** |
| Basic Labor Certification | $6,000 |
| Special Handling Labor Certification for a University Teacher | $5,500 |
| Response to U.S. Dept. of Labor Audit of Labor Certification | $1,500 |
| I-140 not requiring Labor Certification (EB-1 categories or National Interest Waiver) | $7,000 |
| I-140 after Labor Certification (if Labor Certification required) | $2,000 |
| Adjustment of Status for Principal Applicant, including EAD and Advance Parole | $5,000 |
| Adjustment of Status for Dependents, including EAD and Advance Parole | $2,000 |

***Advertising Fees for Labor Certification***

*The fees shown below are approximate.*

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| **Labor Certification Type** | **Description of Required Advertising** | **Cost** |
| *Basic Labor Certification* | Two print ads in Sunday *Denver Post* | $2,500 or more |
| *Special Handling Labor Certification for University Teachers* | At least one on-line ad in an appropriate professional journal/ publication with national or international circulation. One of the acceptable online postings is [InsideHigherEd.com](http://insidehighered.com), which is included when job is posted at CU Careers. | No additional cost |

### **USCIS Filing Fees as of December 10, 2019**

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| **Form Number** | **Form Description** | **Fee** |
| I-140 | Petition for an Immigrant Worker | $700 |
| I-907 | Premium Processing Fee\*\* | $2,500 |
| I-485 | Adjustment of Status to Become a Permanent Resident While in the U.S.\*\*\*  *If under 14 and filing with the I-485 of at least one parent*  *Individuals aged 15-78, including required biometric fee* | $750  $1,225 |
| IVP | Immigrant Visa Application | $519 ($345 Fee + $74 Immigrant Visa Security Surcharge + $100 USCIS processing fee) |

\*\*Premium processing allows the I-140 petition and I-485 application(s) to be sent directly to the appropriate Service Center instead of to a general post office lock box. This can expedite the start of processing by several weeks. In addition, once the I-140 is approved, the officer immediately reviews the related I-485. The faster the I-140 is approved, the more quickly the I-485 will be reviewed.

Premium processing is not available for National Interest Waivers. In addition, the I-485 may only be submitted if there is an immigrant visa available. Unfortunately, this is often the case now that many employment-based categories are backlogged.

\*\*\* The application fee for an I-485 is a package fee that includes the Employment Authorization Document (EAD), advance parole document, and the biometric fee. No premium processing is available for the I-485.

**Submitting a Departmental Request for Consideration of University Of Colorado Denver Sponsorship for Employment-Based Permanent Residency**

1. The Dean for all academic units except the School of Medicine, the Department Chair within the School of Medicine, or the head of the hiring unit for other entities should review the steps and costs of the LPR process and write a letter formally requesting ISSS consideration for any foreign national that the hiring unit would like to sponsor for permanent residency. ISSS has created the “Template Departmental Request for Consideration of LPR Sponsorship” for this purpose. A complete request package that includes the signed Departmental Request, LPR Questionnaire, a job description for the position that the individual currently holds or is expected to be promoted to, and an up-to-date version of the international employee’s resume or C.V., with a complete list of publications, should be sent to ISSS at <ISSS@ucdenver.edu>.
2. ISSS will review the request for consideration and will determine whether or not to sponsor an international employee for employment-based permanent residency. In some cases, ISSS will provide guidance to the department and the foreign national about what can be done to strengthen an individual’s case and will then agree to reevaluate the case within a specific time period or once additional evidence is available.
3. If sponsorship is warranted, but would require us to use the Basic Labor Certification process, the hiring unit must submit a “Non-Person Profile” (NPP) to HR with the job description drafted by ISSS and the hiring unit and copy Florie Montoya, Director of Employment Services. HR must approve the language used in the job description, and this will determine whether or not we can proceed with the labor certification.
4. Once the decision is made to proceed with the LPR process, the direct supervisor, a unit administrator who has successfully completed ISSS training on the LPR process, and the international employee will then meet with ISSS staff and outside counsel where appropriate. The goal of the meeting will be to confirm the most appropriate pathway to permanent residency based on University employment, explain the general process including estimated timeline and any costs associated with the application, and outline respective responsibilities to complete the application process.

ISSS looks forward to working with you!