

IMMIGRATION-RELATED PETITIONS OF INTERNATIONAL APPOINTEES

The foreign labor certification programs allow an employer to hire a foreign worker to work on a temporary or permanent basis in the United States, and are generally designed to assure that the admission of foreign workers will not adversely affect the job opportunities, wages and working conditions of American workers. As of March 28, 2005, the federal government made changes to the process of applying for permanent residence for foreign nationals based on employment, and applicants must file using the new Labor Certification for the Permanent Employment of Aliens in the United States, or PERM process and adhere to the new PERM Regulations.

In order to ensure compliance with federal immigration and employment requirements, the university has established policies and procedures to be followed for university-sponsored immigration petitions. The policies identify which petitions will be handled by the appropriate university international office, which ones must be referred to outside attorneys following centralized university procedures, and which petitions are made outside of university procedures.

Petitions for Initial or Temporary Status

Most international academic and staff appointees will first require the visa-immigration services of the IUPUI Office of International Affairs (OIA) in order to commence the offered employment at IU. Petitions for temporary employment (H-1B, TN, O-1, and J-1) are generally not referred to outside counsel and must be prepared by the IUPUI Office of International Affairs (OIA).

<http://www.iupui.edu/~oia/>

Petitions for Permanent Residency (Green Card) Status

International employees who do not have U.S. citizenship or permanent residency (PR) status and who wish to apply for PR status based on their employment at IU must work with the IU Bloomington Office of International Services (OIS). OIS provides services related to university-sponsored permanent residency cases for all IU campuses, including centralized retention of documentation for labor certifications filed by outside counsel. <http://www.indiana.edu/~intlerv/>

Self-Petitioned Applications for Permanent Resident Status

The university cannot advise on and will not become involved with applications whereby IU employees apply for permanent resident status on their own. Such applications include PR petitions based on family ties or on the categories of National Interest Waiver or Alien of Extraordinary Ability. These applications are not based on IU employment, and individuals are free to pursue them. However, even though the applicant may be an IU employee, 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 able to demonstrate that the petition is in the best interests of the employing department. Furthermore, in accordance with the policies of the University Counsel's office, the IU employing unit may not contract outside attorneys to provide such services for their employees.

A. GUIDING PRINCIPLES AND PRACTICES

All IU/IUPUI departments must first seek approval of the IU Bloomington Office of International Services to sponsor an international employee for permanent residence. Departments that wish to retain an international employee on a permanent basis begin that process by completing an on-line initial request form at <http://www.indiana.edu/~intlserv/>. The online request requires departmental access to the OIS istart system. This page can also be found as a link from the HRMS tab of Onestart. In the Links channel, click on 'istart (International).' On the istart page, click on "Departmental Access Request."

OIS will review the request, the person's position and qualifications, and determine whether the case qualifies for one of the Permanent Residency pathways which can either be handled in-house by OIS or referred to an outside attorney. If the case qualifies for IU sponsorship but will require a test of the labor market, then the case will be referred to an outside attorney to manage the labor market test in conjunction with university processes.

The following criteria must be met before submission of the initial request for permanent residency for teaching and non-teaching academic positions.

- Petition must be full time.
- Position must be defined as permanent by IU. A permanent position is one that does not have a definite termination point defined either by 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. Please note that postdoctoral fellowships and "visiting" positions of any kind are not considered permanent by the university.
- The prevailing wage for the occupation in the area of intended employment must be met.
- The initial request for permanent residence may be undertaken as soon as the candidate has accepted IU employment. Because of tight deadlines, it is wise to begin the PR process quickly however, no formal submission may be made for labor certification until the applicant has been formally hired in the IU HRMS System.

For Teaching and Clinical Faculty (Medical Programs): Petitions Processed by the IU Bloomington Office of International Services

- Teaching must include classroom teaching with a university course number listed as the instructor of record. Clinical faculty who are not instructors of record for a published course is considered by immigration to be in a non-teaching position.
- Position must have been advertised in a national journal or publication. The advertisement must be a paper advertisement.

Labor certification, with its "special handling" provisions for teaching and clinical faculty (FCX) associated with medical programs, is the preferred method to qualify international faculty for U.S. permanent residence, and the recruitment effort must include at least one print advertisement in a national professional journal. So long as the DOL requirements, **including the national print ad** have been followed, departments have 18 months from the date of the offer to file for labor certification for these "special handling" cases.

Although a print ad is not mandatory in the recruitment process for teaching and clinical faculty, assuring a print advertisement could save the department both time and money if the individual hired to the position is a foreign national and the department wishes to retain him or her permanently. If a search yielding an international candidate had not originally included a print advertisement, the hiring department must either re-open the position to conduct a new test of the labor market, or delay sponsorship of permanent residence until the faculty member can document three years of experience and is able to assemble extensive documentation attesting to eligibility for the Outstanding Professor/Research category.

If a unit currently has searches open that have not used a print advertisement, and if the unit can anticipate that the candidate offered the position may be a non-resident foreign national, the unit is urged to place a print advertisement before closing the search. If you have already closed your search and the selected candidate is an international requiring visa sponsorship, please contact the IUB Office of International Services.

- The original letter offering the position to the incumbent must carry a date not more than 15 months before the initial request for permanent residency.
- Can hire *best* qualified, not just minimum qualified.
- OIS will process special handling, outstanding petitions, and teaching positions less than fifteen months from initial offer at no charge to the hiring department or employee.

**For Non-Teaching Positions and
Teaching Positions over 15 months from Initial Offer:
Petitions Processed by Designated Outside Counsel**

- The employing unit must have at least 36 months of expected funding for the position. 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.
- The timeline for non-teaching labor certification must be filed within 180 days of all recruitment.
- The employing unit must be willing to undertake extensive re-recruitment procedures to test the labor market if required to follow the standard employment-based process that includes labor certification.
- The hiring department will be responsible for all fees assessed by outside

counsel for petition processing and filing and for all advertising fees. These fees may be paid by the department or the applicant.

The minimum recruitment efforts include:

1. Two advertisements in the Sunday edition of a newspaper of general circulation in the area of intended employment, provided that the newspaper is the most appropriate publication for the occupation and will likely elicit applications from qualified workers. If a professional journal is more likely to bring responses of potentially qualified applicants, the employer may substitute one newspaper advertisement with one professional journal advertisement.
2. Place a job offer for at least 30 days with the State Workforce Agency (SWA) serving the area of intended employment.
3. Post a notice within the department and announce the position opening in any and all in-house media that would normally be used in the recruitment/announcement for similar positions in the organization (IUPUI academic career website, departmental website).

For labor certification, the U.S. Department of Labor requires IU to prove that no minimally qualified U.S. workers are available to fill the position at the time of the filing at the wage offered. As experience and qualifications do not count if gained in the position, if one applicant meets the minimum qualifications, even if that applicant is not as qualified as the incumbent, then the test fails and the petition cannot move forward. Thus, it is useful for a department to consider whether the position in question will draw qualified applicants or whether it requires a highly specialized complex of skills that only the incumbent holds. If the department feels that the position will almost certainly draw a number of qualified applicants, then it should give serious consideration as to whether the petition should be initiated.

B. PERM RECRUITMENT PROCESS

Initiating the position vacancy/description in FAM

OIS will first obtain from the Office of Affirmative Action or the hiring department, the position description that was used when the applicant was initially hired for the position.

It is possible that the listing of requirements for a labor test will be more detailed than the requirements in the original listing. The labor test procedure requires measurable standards for disqualification, and these standards can be best established by explicit requirements to demonstrate whether or not U.S. applicants can be disqualified. PERM requirements mandate not to tailor the position excessively to the candidate therefore, if the original description specifies required degrees or required years of experience, these items should remain in the labor test description. It is also possible that lawyers may reduce the length of the description of position duties as long as 1) there is at least one descriptive phrase and 2) the labor test description can reasonably be interpreted as the same position as the original position description.

Clinical faculty members in the School of Medicine will typically have income from a departmental practice group, with the practice group membership and income contingent upon the faculty position. Advertisements and positions filed with the Department of Labor must reference both Indiana University and the relevant departmental practice group. This may be stated as simply as, "This faculty position also requires the candidate to hold an appointment with *practice plan name*, an affiliated professional organization."

The IUB Office of International Services (OIS) contacts the PERM applicant with notice of assignment to lawyer for standard labor certification with copies to the hiring department, Office of Equal Opportunity and the Office of Faculty Appointments and Advancement. The lawyer then works with the department (applicant, supervisor and HR/FAM liaison) to review and refine the position description and sources of recruitment.

The department's FAM liaison will access the IUPUI Faculty Applicant Monitoring System (FAM) and complete relevant portions of a new position vacancy identifying it as a PERM search by including incumbent's name in the "Notes" field of FAM's "Search and Screen Committee Members" screen with the comment that this is a PERM search. The departmental liaison completing the FAM entry should also enter recruitment sources provided by the lawyer and position description into the "Ad Plan & Position Description" on the initial vacancy screen.

U.S. workers are defined as U.S. citizens, lawful permanent residents, refugees, and asylees. Only workers in these categories are to be considered as PERM applicants because another qualified international applicant cannot prevent the incumbent international employee from qualifying for permanent residence. To aid in resolving the need to identify U.S. workers, in addition to the Indiana University disclosure, "IUPUI is an EEO/AA Employer, M/F/D", the following statement should be placed in each PERM labor test advertisement:

"Applicant must be a U.S. citizen, permanent resident, refugee, or asylee."

The Department of Labor has approved the use of newspaper advertisements that include brief notes for several positions in a single ad as long as those ads provide links to obtain more information. The links in these ads will most likely point to the department's and/or IUPUI's academic career site. Payment for advertisement(s) will be managed through OIS.

Recruitment Period: The position's recruitment dates should be referenced in FAM on the position's vacancy screen in the "Open" and "Close" fields. These dates should match the position's open date to the earliest posting start date, and close date to the latest posting date provided by the lawyer. The Office of Equal Opportunity will ensure that at least two weeks remain in the posting period, and if necessary, adjust FAM's close date. In the event the lawyer's posting plan cannot be followed as originally planned, the lawyer or liaison will contact the Office of Equal Opportunity to request that the close date be adjusted to a new specified date.

If the position description specifies a fixed length of time that the position will exist, then 36 months must remain in the position's availability. If not, a statement from the department chair/school dean may be necessary to confirm a change to the end date for the position.

If the position is supported by grant funding, then the incumbent may be considered for permanent residency only if the university is committed to ensuring continued funding, either from a different grant or from university funds, if the original grant funding ceases.

Salary: For those clinical faculty members in the School of Medicine who have income contingent upon the faculty position and departmental practice group, the lawyer will aggregate the salaries into one annual salary to meet the labor certification requirement that the individual receive a salary commensurate to the position and typical of the geographic region. The connection of these contingent positions will be disclosed in the position description by noting the relevant practice group along with the department name. Salary information should be included in FAM on the position's vacancy screen in the field labeled "Sal Range."

After the departmental HR liaison has completed the FAM vacancy including recruitment period, salary range, ad plan, position description, search and screen committee members and authorizes the FAM listing, the authorization process proceeds first to the school dean, the Office of Affirmative Action and then to the Office of Faculty Appointments and Advancement. Once the position has been successfully authorized by all, it will be downloaded and displayed on IUPUI's academic careers website, http://www.iupui.edu/~OEO/academicjobs/acad_jobs.htm.

C. PERM Interview Procedure

As applications are submitted, the departmental HR/FAM liaison will insert the candidates' names and contact information into FAM. As Federal regulations require the Office of Equal Opportunity to collect and compile applicant flow data to ensure that our programs are administered in a non-discriminatory manner and as part of the university's Affirmative Action Plan, the Office of Equal Opportunity will, where possible, contact each applicant via email to voluntarily submit ethnicity and visa status. If the applicant's email address is not available, a cover letter that directs them to the online form is sent to the applicant through U.S. mail.

The State Workforce Agency may refer applicants for review. The agency sends these referrals by fax to the department contact designated on the posting. The department liaison will refer the applicant to the IUPUI academic career or departmental website and request that the candidate follow the procedures outlined.

The department, in consultation with the lawyer, will be in charge of disqualifying applicants. Individuals who obviously do not meet requirements will be disqualified without interview. Whenever there is ambiguity, the departmental representative will contact the applicant (usually by phone) and determine qualifications. For example, the position requires a PhD degree. A resume indicates no doctoral-level work, so disqualification is automatic. Another resume indicates doctoral work, but does not indicate a degree completed; a follow up interview is required to determine if the candidate has a PhD.

For interviews that involve more than basic fact checking, the department representative will complete FAM's interview request, and in consultation with the lawyer, note in FAM the reason for the exclusion of other applicants.

U.S. workers are defined as U.S. citizens, lawful permanent residents, refugees and asylees. A word of caution is in order: it is often difficult to assess which applicants are U.S. workers and which are not. It is unlawful to ask certain citizenship-related questions during the hiring stage. If in doubt, the Office of Affirmative Action should be consulted to develop appropriate questions aimed at soliciting the information needed to make this assessment. If it cannot be determined whether an individual is a U.S. worker, the applicant should be treated as if he/she is a U.S. worker and evaluated accordingly.

At the conclusion of the entire interview process, the search committee and lawyer should meet to reach agreement regarding finalists. If not all applicants can be excluded, then the labor test has failed. The petition does not move forward. It is Indiana University's position that applicants may not put their university employment at risk by initiating an employment based application for permanent residency certification.

After a successful labor test, the department, the Office of Equal Opportunity and the Office of Faculty Appointments and Advancement will receive a recruitment report prepared by the lawyer for labor certification. At this point, the HR/FAM liaison must complete the FAM information pertaining to: HRMS title code, administrative title (if any) and tenure status, offer request date, offer candidate, and provide disposition reasons for all other applicants.

As the PERM candidate will already be in the position and rank specified, no new offer documentation should be required. If there are unusual or special circumstances involved in your offer to a candidate, please contact the Office of Equal Opportunity and/or the Office of Faculty Appointments and Advancement.

Sample Letter to Qualified Applicants If Labor Test Fails

Thank you for your interest in the *Insert Job Title* with Indiana University Purdue University at Indianapolis. While we were extremely impressed with your credentials, we wish to inform you that we are no long filling this position at this time. Once again, thank you for your interest and we wish you the best in your future endeavors.

D. RECRUITMENT REPORT

- Description of the recruitment steps performed by the employer
- Description of results of recruitment
 - Number of responses/applicants contacted/interviews conducted/no shows/responses from applicants
 - Number of hires
 - Number of U.S. workers rejected, categorized by lawful job related reasons
 - Explanation of why no one would be able to acquire skills during "reasonable" amount of on-the-job training.

The department must support hiring of the alien by documenting that the alien was found more qualified than each U.S. worker who applied for the job opportunity through rejection reasons entered into FAM and a recruitment report specified by

federal regulation. The assigned lawyer will work with the department to create a recruitment report. The school dean or dean's designee will sign the recruitment report. The lawyer will send a copy of this report with a cover sheet that identifies it as a permanent residency labor test to the Office of Affirmative Action and Academic Policies, Procedures and Documentation inviting any comments or questions that each office may have. If, after five business days, the lawyer has not received comments, the lawyer may proceed with labor certification. The Office of Equal Opportunity will close the FAM posting record once it has acknowledged the recruitment report.

E. DOCUMENTATION OF RECRUITMENT EFFORTS AND RESULTS

The hiring unit should be aware that depending on the specific type of employment-based PR petition filed, all applicants' CVs for the position may be required for submission to OIS to comply with Department of Labor requirements, and certifying officer may request records during an audit. If a department is considering the possibility of permanent residency sponsorship, it should consult with OIS before discarding any application for the position in question.

All documentation in support of a petition for permanent residency, academic and professional appointments alike, will reside with the Bloomington Office of International Services for a period of five years from the date of filing the petition. This includes all application materials submitted in response to a labor test. Additionally, the hiring unit should, and the Office of Affirmative Action will, hold the recruitment process documentation for five years.

The Office of International Services offers information sessions on the permanent residency process. The sessions outline the PR process and PR requirements in detail. Applicants, departmental supervisors and HR liaisons are strongly encouraged to attend such sessions.

Questions regarding immigration-relation petitions should be directed to:

The Office of International Services, IU Bloomington, 812-855-9086,
<http://www.indiana.edu/~intlsv/> , or

The Office of International Affairs, IUPI, 317-274-3260,
<http://www.international.iupui.edu>

Further information regarding university processes for sponsorship of permanent residency is available at <http://www.indiana.edu/~intlsv/>