Options for Permanent Residence: Overview and OSU Policy
Employment-Based vs. Individual Petitions

INTRODUCTION

The Immigration and Nationality Act groups individuals who are not U.S. citizens into two major categories:

- **Nonimmigrants**, who intend to stay in the U.S. temporarily, and
- **Immigrants**, who intend to reside in the U.S. permanently.

A person who is admitted to the U.S. on a permanent basis is commonly referred to by different terms, including: immigrant, permanent resident, lawful permanent resident, resident alien, and green card holder. Each of these terms refer to the same legal status in the U.S.

An individual can become a permanent resident through a variety of avenues, the two of the most common being:

- Close family relationship to a U.S. citizen or permanent resident which qualifies in one of the family-based preference categories; and
- Having education, skills or talents which are in demand in the U.S. and which qualify in one of the employment-based or profession-related preference categories. In this category, there are two sub-groups: those that require an employer sponsor and those that do not.

OSU does not assist with petitions based on family relationship. OSU assists only with **employment-based** permanent resident petitions and only in those employment-based categories that require an employer sponsor. ¹

Employment-based petitions that do not require an employer’s support are considered self-petitions and these petitions may be filed through an outside immigration attorney without approval by OSU. The outside attorney may only represent the petitioner and his/her dependents and may not represent Oregon State University.

The International Scholar and Faculty Services (ISFS) office is responsible for handling employer sponsored permanent residence petitions on behalf of OSU. ISFS regularly consults with OSU General Counsel on immigration matters. On occasion, special permission is granted by the Oregon Department of Justice to consult with an outside immigration attorney when the matter is beyond the expertise of ISFS or OSU General Counsel.

¹ Some employment-based categories allow but do not require employer sponsorship. OSU may in rare cases choose to sponsor a petition in one of these categories. The decision to sponsor an individual in another category would be made in consultation with the Associate Provost for International Programs and OSU General Counsel.
EMPLOYMENT-BASED PETITIONS; EMPLOYER SPONSORED VS. SELF-PETITION

There are five employment-based preference categories for permanent residency. A total of 140,000 visas are available annually for the employment-based categories. This includes numbers for dependent visas. If there are too many applicants for these preference categories, a waiting list develops and the category is considered to be oversubscribed. (See section on Visa Retrogression on page 4).

Employer-Sponsored

Of the five employment-based categories, OSU assists with the following for qualified scholars:

<table>
<thead>
<tr>
<th>Preference Category</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>First Preference (EB-1)</td>
<td>Outstanding Professor or Researcher</td>
</tr>
<tr>
<td>Does not require Labor Certification</td>
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<tr>
<td>Second Preference (EB-2)</td>
<td>Members of the Professions Holding Advanced Degrees (Teaching Faculty)</td>
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<tr>
<td>Requires Labor Certification</td>
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</tbody>
</table>

Outstanding Professor or Researcher

The Outstanding Professor or Researcher category is for a professor or researcher who is recognized as outstanding in the academic field, is known internationally and has worked for a minimum of three years in the field. This category requires a tenured, tenure-track or permanent position and the individual must prove his/her “outstanding” qualifications in three of six different areas of expertise. (Only two areas are required by regulation, but OSU and many other schools require three as “insurance”). The standard definition for permanent employment of a fixed-term faculty position requires that the individual faculty member have at least two years experience at Oregon State (three years overall experience for the category) and three years of funding into the future.

Members of the Professions Holding Advanced Degrees

The category “Members of the Professions Holding Advanced Degrees” is available to those with a minimum of a Master’s degree. The position must also require that applicants hold a degree higher than the bachelor’s degree. OSU processes only teaching positions in this category and the individual must have a permanent, full-time position. This category also requires an approved labor certification from the U.S. Department of Labor.

Labor Certification

A standard labor certification is a determination and certification by the U. S. Department of Labor that there are not sufficient U.S. workers able, willing, qualified, and available to fill the position offered to a specific nonimmigrant. Labor certification is not required for every category of employment-based immigration. For the two categories OSU uses most frequently, a labor certification determination is required only for EB-2, “Members of the Professions Holding Advanced Degrees”. In preparing the application for labor certification, OSU must
specify the minimum requirements for the job including minimum education, training, experience, and other special requirements.


“An employer must be prepared to document that the specified requirements are its *actual minimum requirements* and that it has not hired the alien or other workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.

Essentially, the employer needs to do a two-step evaluation to determine if the requirements for the job truly are the minimum requirements:

1. Did the alien fulfill the minimum requirements at the time he or she was first hired into the current or a substantially comparable job?

2. Has the employer ever hired anyone with less education, training, or experience for a substantially comparable job?

If the alien did not possess the minimum requirements at the time of hire, or the employer has previously hired individuals with less education, training or experience for the job, DOL will view the requirements specified by the employer as not being the *actual* minimum requirements...”

Standard labor certification is extremely difficult to obtain as it is usually very difficult to prove that there were no US applicants who met the minimum requirements for the position. Therefore, OSU uses the special handling provisions of the labor certification process whenever possible. Special handling is available only for college and university teachers and requires proof that an employer conducted a competitive recruitment and that the most qualified individual was hired for the position. Among other requirements, the scholar must meet the minimum qualifications for the position as advertised, the labor certification must be submitted within 18 months of the job offer and the position must have been advertised in at least one electronic, web-based or print national professional journal with national circulation for a minimum of 30 days.

Divisions/Colleges/Departments that wish to pursue standard labor certification would only be able to do so after a thorough analysis of the situation and approval by the Associate Provost for International Programs, OSU General Counsel and the Director of International Scholar and Faculty Services. In addition, the sponsoring department must agree to pay legal costs associated with any consultation services required for submission of the petition.
Self-Petition Possibilities

The scholar may self-petition (apply to USCIS on his or her own behalf) for permanent residency in a couple of employment-based categories.

EB-1 Aliens of Extraordinary Ability

In this EB-1 category, a job offer letter is not required and therefore Oregon State does not process these petitions, but rather allows the scholar to self-petition. In this category, the individual is one who has risen to the top 5% in his/her academic field and must demonstrate this by documenting sustained acclaim and achievements.

EB-2 Members of the Professions Holding Advanced Degrees/National Interest Waiver

In this EB-2 sub-category, the labor certification and the job offer letter may be waived if the skills and qualifications of the individual, and the services the individual can provide to the US, can be considered in the national interest. This is known as a National Interest Waiver.

ADDITIONAL OPTION: DIVERSITY LOTTERY

The Diversity Lottery is separate from the employment-based and family-based petitions for permanent residency. The US annually makes available 55,000 immigrant visas through a diversity lottery.

The Department of State website on the Diversity Lottery can be found at: http://travel.state.gov/visa/immigrants/types/types_1318.html

VISA RETROGRESSION

As referenced on page 2, a total of 140,000 visas are available annually for the employment-based categories. Each country and each preference category has a numerical limit to the number of visas which can be granted. If more than 7% of the total number has been allotted to one particular country, no new visas for citizens born in that country can be granted until the new fiscal year makes new visas available. In addition, no more than 28% of permanent resident visas can be awarded in one specific category. Therefore, visa numbers can be oversubscribed based on country of birth or preference category. When visa numbers are oversubscribed, a waiting list develops. A scholar’s place on the waiting list is determined by the “priority date” of his or her petition. The priority date is the date that the labor certification was submitted to the Department of Labor or the I-140 was submitted to USCIS.