A Tangled Knot: U.S. Permanent Residency for Teaching Faculty

Office of Global Engagement
Immigration Services (IS)
“Well that’s the thing about knots, isn’t it?
If you don’t know the trick, it’s a muddled predicament.

But in fact each loop is carefully placed,
one end twisting right into the other in a way
you might not have expected.”
Obtaining LPR is a matter of eligibility. There are **4 main routes to LPR:**

- **Family Based**
  - 226,000 visas per year

- **Employment Based**
  - 140,000 per year

- **Visa Lottery**
  - 55,000 per year

- **Humanitarian (refugees and Asylees)**
  - 10,000 per year
Employment Sponsorship

- Outstanding Professor/Researcher (EB1)
- Labor Certification
  - PERM for College/University Teacher (EB2)
  - PERM for Standard Process (EB-2 (Non-teaching) and EB3)

3IS-OGE-UGA 12/7/2020
The most important things to remember about the “PR” process....

It’s confusing, frustrating, expensive, counter-intuitive and time-consuming
Eligible Faculty?

- Position must require a minimum of a Bachelor’s degree
- Employee must have that degree, and any required prior work experience; in general work experience required cannot have been obtained while working at UGA
- Position must be full-time employment
- Department must intend to hire permanently or indefinitely
- Department must agree to pay for sponsorship, and assist with required paperwork
- Employee must be personally eligible for U.S. permanent residency
## Steps to the green card

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<th>Labor Cert process</th>
<th>OPR process</th>
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<td>• Compass e-forms submitted</td>
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<td>• DOL: Prevailing wage</td>
<td>• Assemble evidence</td>
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<td>• Document recruitment</td>
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<td>• DOL: Labor Cert filing</td>
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Initiating the PR Process

- Request access to our “Compass” online portal:
  - [http://compass.uga.edu](http://compass.uga.edu)
  - Click on Administrative Services, and login using your UGA MyID
  - Complete and submit the request form.
  - We will be in touch within one business day to grant you access to the online request forms
- E-form requests for PR sponsorship in Compass
  - Accuracy and consistency
  - Internal Fee payment – charged upon form submission
- Managing expectations
Categories of Filing - Options

- **EB-1b – Outstanding Professor or Researcher**
  - **Must prove:**
    - Three years experience teaching or conducting research
    - Offer of “permanent” or tenure-track position at a U.S. College or University
    - Recognized internationally as a scholar or teacher who is outstanding in a specific academic area
    - Evidence needs to be provided in support of the petition

- **EB-2 – Special Handling for teaching faculty**
  - **Must prove:**
    - compliant advertising
    - best qualified candidate hired
EB-1b (aka OPR) – Must show evidence in at least two of the following categories

- (A) major prizes or awards for outstanding achievement
- (B) membership in associations in the academic field which require outstanding achievements in the academic field;
- (C) Published material in professional publications written by others about the alien's work in the academic field.
- (D) participation as the judge of the work of others
- (E) original scientific or scholarly research contributions to the academic field;
- (F) authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.
## Costs / Benefits to Filing OPR

<table>
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<th>Costs</th>
<th>Benefits</th>
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<td>• A good deal of work in assembling and reviewing documentation</td>
<td>• Category not usually backlogged for immigrant visa issuance OR shorter backlogs</td>
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<td>• Subjective decision on the part of U.S. CIS</td>
<td>• No Labor certification required from DOL</td>
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Labor Cert Process Overview:

1. Apply for DoL prevailing wage (2 to 4 months)
2. Prove ad was placed in online national or international journal for a minimum of 30 days, or print national or international journal
3. Document evaluation of all applicants
4. Document in recruitment report to Immigration Services office why our candidate is best qualified
5. Retain all documentation pertaining to the search for five years. (10 years in compliance with USG requirements)
6. File “PERM” application with DoL (online)
### Labor Certification – Teaching vs. Non-teaching

#### Teaching
- Must advertise in a national or international journal appropriate to the field.
- Online is ok – if posted for a minimum of 30 days
- Have to prove our international employee is the best qualified applicant.

#### Non-teaching
- Extensive advertising (handled by HR)
- Have to prove no MINIMALLY qualified U.S. applicants
- What is “minimally qualified?”
- What is a U.S. applicant?
Prevailing Wage

- First step, evaluate ad posted, and degree and credential requirements
- File Prevailing Wage application online; determination obtained from the Department of Labor;
- Can take 8 – 12 weeks or more to receive
- Employer is required to offer 100% of prevailing wage as salary at the time the person applies for the green card
Labor Certification Application (PERM)

- Program Electronic Review Management System
- DOL attestation-based Labor Certification (LC) application to prove an employer cannot find qualified U.S. workers to fill an open position
- Requires very strict adherence to DOL standards for advertising and recruiting
- Occasionally a “re-recruitment” is required, due to problems with initial advertising. (counter-intuitive)
- Can take 4 – 12 months
...The bad news...

- if the ad placed does not have all the clear minimum required qualifications listed – OR
- if more than 18 months from date of offer OR
- If hired international did not meet all minimum ad requirements
- Then we must re-advertise and re-recruit.
- This is called a “labor market test” by the Dept. of Labor
Paperwork
Internal Posting Requirement

- Employer must post a notice of the job opportunity at the worksite for 10 consecutive business days. IS will send this to the sponsoring Department and HR.

- IS will email the department the posting and will notify the department when to remove it and obtain department head signature.

- IS must receive the original signed posting back to place in the DoL audit file.
Preparing Recruitment Reports

• Three documents needed – we supply templates/samples
  • Search committee recommendation confirmation
  • Statement of alien qualifications
  • Recruitment report statement

• All of this must occur within 18 months of the job offer date.
Now what....

The Future

NEXT EXIT
Next Step: I-140 Employer Petition Filing

- After Labor Cert approval, the employer can file the I-140 petition with the Dept. of Homeland Security
- This petition states that
  - we want to hire the foreign national permanently
  - DOL has approved our hiring and recruitment
- Can take 2 weeks, or 5 to 7 months to get approved, depending on whether “premium processing is requested from the government.
- The date the labor cert was filed, OR the date the I-140 was filed, is the employee’s “Priority Date”
If employee is not “backlogged” (more on this later) he or she can also file personal application for the green card “concurrently” with our I-140. This is called the I-485, or “Adjustment of Status” application.

Internationals cannot file concurrently unless there is a visa number available (see Visa Bulletin).


Filing of the employer’s I-140 does not give the international any legal status in the U.S., nor any work eligibility. Vital for the international to have and to maintain an underlying work visa status (usually an H-1B) until the green card is approved.
PRIORITY DATES

Dept. of State (DOS) determines when a category of filing is backlogged for certain countries

- If there is a backlog in the category under which we filed, the priority date showing on the Visa Bulletin will determine if an I-485 can be filed. If the beneficiary’s priority date is **before** the date listed for the EB category and the beneficiary has an **approved** I-140 petition, he/she may file an I-485 application.
- If the beneficiary’s priority date is **on or after** the dated listed, he/she cannot file the I-485. The beneficiary will need to maintain current immigration status to remain in the U.S.
- H-1B status **currently** can be extended beyond 6 years if we have an approved I-140, or if 365 days have elapsed beyond the priority date.

- Visa Bulletin Explanation:
# Visa backlogs

**Visa Bulletin for June 2019**  
Published by the U.S. Department of State

<table>
<thead>
<tr>
<th>Employment-based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>EL SALVADOR</th>
<th>GUATEMALA</th>
<th>HONDURAS</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
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Internal Process: Required E-Forms:

- Three request “steps” to initiate the sponsorship:
  - Step 1: Compass access (http://Compass.uga.edu)
  - Step 2: Department representative completes department forms
  - Step 3: Employee completes employee biographical information forms We appreciate your help...and patience....;-)
- The immigration advisor will then be in touch to begin the process.
Filing Costs (2019-2020)

- All advertising costs (~$1,300)
- Internal IS “cost recovery fee”: $2,422 - $2,631 depending on type of case filed. (fee for service, not approval); DHS filing fee I-140 application: $700.
- DHS premium processing I-907 application if time is short: $1,440.

Personal cost to employee for green card application – I-485:
- $1,225. Additional $1,225 for spouse and each child over 14.
- Medical Exams – about $300 each (not covered by insurance)
- $552. for AoS application packet assembly
The goal....
IS Contact Information

- Immigration Services
- Office of Global Engagement
- 1324 South Lumpkin Street
- Athens, GA 30602

- (706) 542-2900
- Fax: (706) 583-0106
- immigration@uga.edu
- https://globalengagement.uga.edu/immigration