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General Information Regarding the Process for Employment-Based Permanent Residency Applications

Employment-based permanent residency applications can be very documentation-heavy and require a lengthy process before the applicant receives permanent resident status.

It may be advantageous for the university to consider renewing a currently employee's H1B status if possible. An international employee's H1B status can be renewed for an accumulated total of 6 years. This includes any time spent on H1B status at a former employer(s). If an employee has not yet reached the accumulated 6 years, the university has the right to file an extension for the H1B status on behalf of the employee.

If H1B status cannot be extended for the employee and the university wishes to retain the employee in their current position, the Permanent Residency application (Form I-140) must be submitted prior to the end date of the international employee's current immigration status.

Many factors regarding a permanent residency application will be affected by the Preference Classification used for the application. There are 3 classifications that are most likely to be used for university employees.

EB-1: Aliens with extraordinary ability, Outstanding Professors and Researchers.

EB-2: Members of the professions holding advanced degrees, Aliens of exceptional ability in the sciences, arts, or business.

EB-3: Professionals and skilled workers (requiring 2 or more years of specific education, training or experience).

There are very specific descriptions for each classification that must be reviewed. This will be done thoroughly in conjunction with the department as information regarding the job description and the international employee's qualifications will be required.

Permanent Residence Application Process

The general process outlined below is based on an EB-2 classification which is the most likely classification to be used for a university employee.

- 1.) Obtain a Prevailing Wage Determination (ETA Form 9141) from the Department of Labor's National Prevailing Wage Center (NPWC).
 - An employer is obligated to pay 100% of the prevailing wage specified in the NPWC's Prevailing Wage Determination.
 - This step may have already been completed during the H1B application process and is required before submitting the Labor Certification Application.
- 2.) Submit a Labor Certification Application (LCA) (Form ETA 9089)
 - A labor certification is a finding by the U.S. Department of Labor (DOL) that there are not sufficient U.S. workers in the geographic area of employment who are able, willing, qualified and available to do the job in question and that the employment of an alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.
 - The LCA is required for most employment-based permanent residency applications. There are specific exceptions to this but each case must be thoroughly reviewed first.
 - This application can only be submitted by the Employer or the Employer's attorneys.
 - This application may have already been completed as part of the H1B application process. However, in order for the previously approved LCA to be used for a permanent residency application, the Form I-140 must be submitted within 180 days of the approval of the LCA.
- 3.) Submit Form I-140 ("Immigrant Petition for Alien Worker")
 - This form is submitted to the U.S. Citizenship and Immigration Services for review and processing.
 - This form must be submitted within 180 days of the LCA's approval or may be filed without the LCA under very specific circumstances.
 - Upon approval, the applicant (the international employee) will be issued a priority date.
- 4.) Submit Form I-485 ("Application to Register Permanent Residence or Adjust Status")
 - This form can only be submitted once the Form I-140 is approved and a visa number has been issued to the applicant.
 - Visa numbers are issued based on priority dates as determined by the U.S. Citizenship and Immigration Services. However, priority dates vary widely depending on the classification used for the I-140 and the applicant's country of nationality. International employees from several countries including China and India face fairly significant waits due to the number of applicants from these countries applying for permanent residency. The current status and waiting

times based on priority date can be found the U.S. Department of State's Visa Bulletin available online.

5.) Submit Form I-765 ("Application for Work Authorization")

- This form is to request work authorization from the U.S. Citizenship and Immigration Services.
- This form can be submitted concurrently with the Form I-485 ("Application to Register Permanent Residence or Adjust Status").
- This can be valuable if the H1B or current non-immigrant visa status with employment authorization is expired or will expire within a short period of time.
- Once the Employment Authorization Document is received and provided to Human Resources for I-9 verification, the employee would be allowed to continue working.

Associated Fees and Costs

Generally, fees for a permanent residence application may be paid either by the employee or the university. There are 2 exceptions to this which are further explained below. Standard practice at most universities and colleges is for the university to pay for all fees associated with a permanent residence application on behalf of the employee with the caveat that, if the employee leaves the university within 3 years of the application submission, the university can recoup their costs from the employee (except for the costs associated with the LCA or premium processing if requested by the university).

Labor Certification Application:

- The university is responsible for any attorney fees or other costs required for the preparation and submission of the LCA. However, there is no fee for the LCA that must be paid to the Department of Labor.

Form I-140 (Immigrant Petition for Alien Worker): \$580

Form I-485 (Application to Register Permanent Residence or Adjust Status): \$985

Form I-765 (Application for Employment Authorization): \$380

Form I-907 (Request for Premium Processing): \$1,225

- Requests for Premium Processing may be submitted when timely processing of an application to U.S. Citizenship and Immigration Services is required for some reason.
- Premium Processing means the application in question will be reviewed and processed within 15 calendar days of receipt by U.S. Citizenship and Immigration Services.
- If the university requests the premium processing, the university must pay the associated fee. If premium processing is requested by the international employee, the employee is responsible for paying the fee.

General Timeline for the Process

- 1.) Prevailing Wage Determinations (Form ETA Form 9141)
 - The Department of Labor has not issued any guidelines or information regarding processing times. They advise submitting the form at least 60 days before the Prevailing Wage Determination is needed.
- 2.) ETA 9089 (“Labor Certification Application”)
 - Official processing time is listed as 60 days from date of submission via the online portal. However, actual processing times appear to take 4-8 months.
- 3.) Form I-140 (“Immigrant Petition for Alien Worker”)
 - Processing times vary depending on the classification under which the Form I-140 was submitted. The fastest category is currently processed in approximately 4 months. For all other categories, U.S. Citizenship and Immigration Services is currently processing applications received in early October 2013 or early November 2013.
 - Once the Form I-140 has been approved, a Priority Date is issued to the applicant. In order for the applicant to move forward with Form I-485, their priority date must be current.
- 4.) Form I-485 (“Application to Register Permanent Residence or to Adjust Status”)
 - Currently, applications are being processed within 4 months of receipt by the U.S. Citizenship and Immigration Services.
 - However, processing times can change significantly depending on when the Form I-485 is submitted.
- 5.) Form I-765 (“Application for Employment Authorization”)
 - Currently, applications are processed within 60-90 days of receipt by the U.S. Citizenship and Immigration Services.