

Fayetteville State University

Sponsorship of Foreign Nationals for U.S. Permanent Residence (Obtaining a "Green Card")

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| Authority: | Issued by the Chancellor. Changes or exceptions to administrative policies issued by the Chancellor may only be made by the Chancellor. |
| Category: | Employment – Employees Exempt from the State Personnel Act (Faculty) |
| Applies to: | ●Faculty |
| History: | Approved, June 16, 2006 First issued, June 16, 2006 |
| Related Policies: | Various federal laws and regulations including the Immigration and Nationality Act (INA) and 20 CFR 256. |
| Contact for Info: | General Counsel (910) 672-1141 |

I. Introduction

Fayetteville State University has established this policy and the accompanying procedures that provide details on the filing by the university of petitions on behalf of foreign nationals seeking permanent residence. "Permanent residence" is a status granted by the U.S. government to citizens of other countries. It allows an individual to remain permanently in the U.S. The process is also known as obtaining a "green card" or "immigrant visa." Permanent residence is not the same as U.S. citizenship, although permanent residents may become eligible to become "naturalized" U.S. citizens after a certain number of years as a permanent resident.

II. University Sponsorship

Fayetteville State University will sponsor for U.S. permanent residence only full-time regular employees in certain academic positions. The university will not sponsor staff who are in non-academic positions unless a special case can be made for an exception to this policy. U.S. immigration laws do not permit FSU to sponsor students, part-time employees, or temporary employees for permanent residence.

When the university decides to sponsor an employee as a permanent resident, the university will be required to make a substantial commitment of resources. The Chancellor or Chancellor's designee must represent to the United States Citizenship and Immigration Services (USCIS), under oath, that the foreign national will be employed by the university on a long-term basis. Thus, the university will sponsor a foreign national for permanent residence only when there is a reasonable expectation that the individual will remain in the position indefinitely.

No FSU department or individual shall promise current or prospective employees that the university will obtain permanent residence on their behalf. The petitioning process is lengthy, involving up to three government agencies, and the final decision to grant permanent residence must be made by the USCIS. It is never a certainty that permanent residence will be approved and therefore should not be promised as an enticement.

Note: Employees are free to file immigrant petitions on their own behalf without approval by Fayetteville State University. These petitions may be filed in the categories of “Extraordinary Ability” or “National Interest Waiver,” and the employee him/herself will act as the petitioner. While FSU department heads, professors, and other employees may write recommendation letters in support of such applications, they may not sign any U.S. Government forms on behalf of the university in relation to these applications.

III. Overview of Employment Based Permanent Residency

The university will use the most appropriate of three procedures to obtain permanent residence for a qualified academic employee:

- A. **Outstanding Professor/Researcher.** Approval of an outstanding professor/researcher petition may be obtained if the university can demonstrate that a sponsored employee has an *exceptional record* of scholarly achievement in his or her field. More than three years of teaching and/or postdoctoral research experience, a very strong record of publications, superlative evaluations by recognized experts in the field, and the receipt of prizes, awards, or other forms of professional recognition are usually required to obtain approval of an outstanding professor/researcher petition. Simply being able to assemble the required types of evidence outlined above is not sufficient to succeed in this category. The evidence must actually demonstrate that the employee is outstanding.
- B. **Labor Certification for Faculty-Teaching Positions.** The university can apply to the U.S. Department of Labor (DOL) for labor certification under *special handling rules* for a sponsored employee appointed to a faculty-teaching position (as assistant, associate, or full professor). Under special handling rules, the university is not required to demonstrate that there were no qualified U.S. citizens or permanent resident workers available for the position but only that the appointee was the best qualified applicant. The university can usually meet this requirement by presenting to the DOL the details of the FSU departmental recruitment process that led to the faculty appointment.

Please note that labor certification applications under **special handling** rules must be filed with the DOL **within eighteen (18) months of the sponsored employee's selection for the position.** Failure to file within this time period may make it impossible for the university to obtain permanent residence for an employee in a faculty teaching position for a period of several years or longer.

- C. **Labor Certification for Advanced-Degree Holders.** If a sponsored employee does not meet the requirements for outstanding professor/researcher or does not meet the requirements under the special handling rules, the university can apply to the DOL for labor certification for an advanced-degree holder. To obtain a labor certificate, the university must demonstrate that no U.S. workers who applied were even minimally qualified. This is done through a special advertising process under the supervision of the DOL. The special advertising process requires the university to place one print advertisement in a national professional journal, such as the *Chronicle of Higher Education*, and to post the position in house. The advertisement must state the title; duties (including teaching); and minimum requirements for the position. The university must also meet DOL salary requirements in order to obtain an approved labor certificate.

IV. **Procedures for Obtaining Permission to File for U.S. Permanent Resident Status**

- A. Before initiating the permanent resident application process, the foreign national's department chair shall meet with a member of the General Counsel's staff to determine eligibility criteria and review the various pathways to permanent residence.

Departments should be aware that the process to obtain lawful permanent residence in the United States is lengthy and complicated and involves sustained effort by both the hiring department and the General Counsel's office. **As an employer, the university must undertake this process because of business necessity. Departments must exercise care when using the employment authority of the university to obtain immigration benefits for aliens. Such authority should only be used when it is consistent with university goals, programs, standards, and policies, as well when it is within the intent of U.S. immigration law.**

- B. To obtain permission for the university to sponsor a foreign national for permanent residence, the **department chair** shall discuss with the **dean** of his or her school/college the possibility of the university's sponsoring a foreign national in the department. **This discussion should occur no later than twelve (12) months from the date of the foreign national's offer letter.**
- C. The **dean** shall consider the request and if a decision is made to approve, the **dean** shall forward a statement detailing the following along with any accompanying documents:
1. name, title, and departmental affiliation of the foreign national;
 2. the individual's credentials (special abilities) and an explanation of the dean's determination that the foreign national's services represent a vital function to the university, such that an immigration accommodation is necessary to allow an indefinite period of employment;

3. a statement of how any fees that might be incurred will be paid. The statement constitutes the dean's approval of the department chair's request that the university sponsor the foreign national.

The statement, along with any accompanying documents, shall be forwarded to the **provost and vice chancellor for academic affairs** ("provost"), with a copy to the department chair, within five (5) days of the dean's meeting with the department chair.

- D. The provost shall review the request from the dean. If the provost **agrees to support** a petition, the General Counsel's Office shall be notified in a letter from the provost, with a copy to the foreign national, the department chair, and the dean. If the provost **does not agree to support** a petition, the General Counsel's Office will be so notified in a letter from the provost, with a copy to the foreign national, the department chair, and the dean.

No permanent residence process shall commence prior to the receipt of the required approval from the provost. (*An Application for Permanent Employment Certification* must be filed within eighteen (18) months of the date of selection, which is the date of the foreign national's offer letter. Thus, it is imperative that the General Counsel's Office receive the provost's decision no later than **thirteen (13) months** following the date of the foreign national's original offer letter.)

- E. The General Counsel's Office shall be the sole authority for filing documents pertaining to a request for permanent residence on behalf of the university. The Chancellor or Chancellor's designee shall be the only individuals authorized to sign the legal documents and forms required to apply for permanent residence.

The General Counsel's Office shall respond only to the provost on inquiries regarding the filing and/or status of a particular application.

V. **Submission of Required Documentation**

Once the request to file an application for permanent residency has been approved by the provost, the following information shall be immediately submitted to the General Counsel's Office by the department chair:

- A. Three copies of at least one advertisement placed at least one time in a national professional journal that states the position title, duties, and minimum job requirements. The copy of the advertisement must include the entire title page showing the name of the journal and the date of publication as well as the entire page on which the ad appeared, including the title and date of publication. The ad should be circled or highlighted.
- B. A letter in the form of a search report signed by the chair of the search committee that details the recruitment process. The letter must be on letterhead (two originals with original signature and one copy). The letter must include the following:
 1. specific recruiting and screening procedure followed by the department;

2. total number of applicants for the position;
 3. specific lawful job-related reasons why **each** U.S. resident or citizen who applied for the position was not as qualified as the foreign national, based on the advertised education and experience requirements. This information provided in the form of a list as an addendum, identifying each applicant by number, not by name, with the degree-granting institution and the reason(s) for rejection. Although resumes are not submitted, it is important to retain them for at **least five years** in case the DOL specifically requests them; and,
 4. any other recruitment procedures followed, such as letters sent to other universities and efforts made at conferences to recruit. Attach evidence, such as copies of letters, conference job listings, etc.
- C. Resume of the foreign national and other documents that provide information related to the foreign national's experience, education, special skills, and supervisory duties (if any).

VI. Procedures for Filing for U.S. Permanent Resident Status

There are five steps involved in obtaining U.S. permanent residence on the basis of an offer of employment when an individual is in the U.S. and seeks to adjust to permanent resident status while remaining in the U.S. The General Counsel's Office is responsible for complying with the following procedures:

Step 1: The university must request a prevailing wage determination from the N.C. Employment Security Commission;

Step 2: The university must post teaching faculty positions in accordance with DOL regulations *even if a position has been filled already by the person for whom the university is applying*. The postings must occur for a minimum of ten (10) working days in two conspicuous locations at the university.

Step 3: The university must request labor certification approval from DOL. This is done by filing an *Application for Permanent Employment Certification* (Form ETA 9089) with the DOL. Because Form ETA 9089 requests information pertaining to the prevailing wage, Form ETA 9089 cannot be completed until the university has received a prevailing wage determination from the N.C. Employment Security Commission.

Step 4: After approval of the labor certification, the university must file an *Immigrant Petition for an Alien Worker* (Form I-140) with USCIS. The university must attach the certified ETA Form 9089 to a completed USCIS Form I-140, along with the appropriate fees, and submit the package to the appropriate USCIS Service Center. In filing the I-140, the university is required to show that the foreign national is qualified for the job, holds the appropriate degrees, and has the

required experience as described in the labor certification. Experience gained while working at FSU cannot be considered toward fulfilling the experience requirements stated in the published advertisement.

Step 5: Upon approval of the immigrant petition, the foreign national and his or her spouse and children must each file an application for adjustment of status (Form I-485) with USCIS or for an immigrant visa at a U.S. consular post abroad. In some cases, the I-485 may be filed concurrently with the I-140. ***(Please note that the I-485 may be included with the submission by the university of the I-140.)*** USCIS or the consulate reviews the applications, conducts background checks on all applicants, and determines whether it will grant permanent resident status. If approved, the new permanent residents will be issued their "green cards."

Filling out Form I-485 is the responsibility of the individual, not the university, as the university considers its activity with regard to sponsorship for permanent resident status complete when the USCIS adjudicates the I-140. The foreign national can send in the I-485 on his or her own when the acknowledgment of the I-140 has been received. The foreign national may wish to obtain legal counsel for assistance in filling out the I-485, although such assistance may not be required.

When the USCIS adjudicates Form I-140 and the individual is classified in an appropriate immigrant classification, the university considers that its activity with regard to sponsorship for permanent resident status is complete. FSU will routinely route the receipt notice to the individual as soon as it is received.

Please note that North Carolina state law prohibits state agencies and their employees from retaining an attorney to represent the university's interests without the approval of the Attorney General. Thus, any requests for permanent residence that require sponsorship by the university must be filed by the university's General Counsel.