



## I. 15.1.2 Employment-Based Permanent Residency Sponsorship

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### II. Purpose

UT Health San Antonio (UTHSA) strives to hire outstanding faculty and staff in support of the institutional mission, including hiring foreign national citizens. This policy articulates the conditions under which the University will sponsor foreign national citizens for employment-based U.S. lawful permanent residency.

### III. Scope

Lawful permanent residency (LPR) is a classification that allows non-citizens to live and work in the U.S. on a permanent basis. A lawful permanent resident is also commonly referred to as a “green card” holder. Once an individual becomes a permanent resident, s/he may remain in the U.S. indefinitely provided that s/he does not abandon permanent resident status or become removable under immigration law.

There are multiple pathways to lawful permanent residence, which may be based on employment, a family relationship, refugee or asylum status, or other special provisions. This policy focuses on employment-based pathways, and particularly those requiring sponsorship by the University.

### IV. Policy

#### A. Eligibility

In order to qualify for UTHSA sponsorship, the individual must be an employee of the UTHSA and be working full-time in a permanent position of an indefinite nature with the expectation of continued employment. A permanent position is one that is tenured, tenure-track or does not have a definite termination point defined by a project or assignment, is not seasonal or intermittent, and is not presently intended or contemplated by the hiring unit to have some specified end date in the future. UTHSA sponsorship must be approved by the head of the hiring unit, Dean of the School/VP of the division, and the Director of the Office of International Services (OIS).

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Sponsorship of staff (non-faculty) positions will only be considered after careful examination and consultation by OIS, Human Resources, and the hiring unit, and will only be approved for positions that are otherwise difficult to fill. Positions that are temporary in nature, such as a Postdoctoral Fellow, Clinical Resident/Fellow, or Visiting Professor, are ineligible for University-sponsored permanent residency.

### B. Sponsorship Pathways

1. The University sponsors individuals for permanent residence utilizing the following employment-based pathways (briefly summarized below):
  - a. Outstanding Professors and Researchers (EB-1B): To qualify for this sponsorship under this employment-based first preference category, the employee must be recognized internationally as outstanding in a specific academic field, as demonstrated through awards, publications and citations, original research contributions, and participation as the judge of the work of others in the field, etc. The employee must have a minimum of 3 years' experience in the field.
  - b. PERM Labor Certification (EB-2 or EB-3): A permanent labor certification issued by the Department of Labor (DOL) allows an employer to petition to hire a foreign worker to work permanently in the U.S. Before the University can submit an immigration petition (Form I-140) to U.S. Citizenship and Immigration Services (USCIS), the University must obtain an approved labor certification from the Department of Labor's (DOL) Employment and Training Administration (ETA). The employee must hold an advanced degree (beyond a bachelor's degree) to qualify for EB-2 (employer-based second preference), must be selected through a national open search, and the University must meet minimum prevailing wage and recruitment requirements.
    - i. "Special Handling" Labor Certification: University employees with teaching duties qualify for PERM processing pursuant to special recruitment, which allows the University to choose the best qualified candidate. A print ad (or qualifying electronic ad) must be placed in a national professional journal during the recruitment process. This is the most common sponsorship pathway for faculty members who do not have a significant publication record.
    - ii. Basic Labor Certification: University staff and faculty without teaching duties can be sponsored using a basic labor certification. This method requires a more stringent recruitment process outlined by the Department of Labor, and the University must advertise the employee's position to determine that there are no able, willing, qualified, and available U.S. workers who meet the minimum requirements for the position. Sponsorship utilizing this pathway will only be approved for positions that are otherwise difficult to fill and must also be approved by the VP for Human Resources.
2. The Office of International Services (OIS), in consultation with the hiring unit, will determine the most appropriate pathway for UTHSA sponsorship. This determination may factor in the preference category if the employee is from a country that is subject to immigrant visa backlog due to per country limitations.

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### C. Timing

The hiring unit must consult with the Director of OIS before committing to sponsorship for employment-based permanent residency by the University. OIS will only consider a request for sponsorship from the hiring unit after the employee commenced employment at the University. Only in instances where a foreign national employee has or will soon exhaust the maximum number of years in H-1B or other equivalent non-immigrant status, will OIS entertain requests to begin permanent residency sponsorship prior to an offer or commencement of employment.

If possible, the request for LPR sponsorship should be submitted to OIS at the latest before the end of the employee's 4th year in H-1B status in order to ensure that the first step in the process has been filed before the end of the employee's 5th year in H-1B status, thus allowing for H-1B extensions until the employee has received the green card.

LPR sponsorship can be a time-intensive process, and employees can anticipate waiting at least 1-2 years for the green card once the process has commenced, and much longer if the employee was born in a country that is subject to visa backlog. The pace of the process depends on multiple factors, including the hiring unit and employee's ability to gather required documentation, OIS workload and processing times, Department of Labor and U.S. Citizenship and Immigration Services processing times, as well as changes in federal guidelines with respect to evidentiary standards.

Because of factors beyond OIS' control, OIS approval of any request to proceed with the permanent residency process does not guarantee success in obtaining permanent residency.

### D. Requesting Sponsorship

The request for sponsorship must come to OIS directly from the hiring unit, and not from the foreign national employee. A hiring unit should consider the following factors before proposing to sponsor a foreign national employee for permanent residency:

1. The hiring unit's confidence that funding for the foreign national employee's position will continue to be available;
2. The hiring unit's willingness and ability to pay the costs associated with the permanent residency process (these could include advertising fees, filing fees, and OIS or legal fees);
3. The hiring unit's ability to dedicate administrative staff time to the permanent residency process; and
4. Evidence of a commitment to a long-term employment relationship by both the hiring unit and the foreign national employee

The OIS may permit the hiring unit to hire an approved outside counsel to assist OIS with a petition and to act as UTHSA's agent in these matters. Typically, OIS will require use of outside counsel for Outstanding Professor/Research petitions, Special Handling Labor Certifications and Basic Labor Certifications. The determination of

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when outside counsel's assistance is necessary is made by OIS on a case-by-case basis in consultation with the hiring unit, taking into account current OIS resources, the time-sensitive nature of the request, as well as the level of complexity and specialization required to complete the petition.

An outside attorney cannot represent UTHSA in immigration matters without the express written permission of the Director of International Services or the Vice President of Academic, Faculty, and Student Affairs. Any outside counsel must be approved by the University of Texas system to represent UTHSA in immigration matters.

Foreign national employees are responsible for preparing, submitting, and completing any application for adjustment of status (Form I-485) filed with USCIS or application for immigrant visa processing at a U.S. consulate abroad. This application represents the final stage of the green card process. OIS will not advise foreign national employees or hiring units on eligibility for adjustment of status or immigrant visa processing beyond providing general information and referring the foreign national to an outside immigration attorney for individualized counsel and assistance.

### E. Payment

Immigration law requires the employer to pay all costs associated with the labor certification (PERM) process, including advertising and any legal or OIS fees. This prohibits an employer from requesting reimbursement from the employee or withholding the cost of the PERM from the employee's wages.

The hiring unit is also required by this University policy to pay the filing and legal/OIS fees for the I-140 petition, where the University has filed the petition. The employee may only pay for Premium Processing of an I-140 petition if premium processing is not necessary for continued work authorization or required travel for UTHSA business and is in the personal interest of the employee.

Hiring units are not responsible for any fees or costs associated with the final step in the process, which is the employee's adjustment of status application (Form I-485) or consular visa processing. However, hiring units are permitted to assist the employee with payment of all or part of this process, within their discretion. If the hiring unit does assist with payment associated with the Form I-485, the employee must pay the filing fees and/or attorney costs directly and request reimbursement through the institution.

### F. Alternative Pathways

Using privately retained immigration counsel, employees may pursue self-petitions for permanent residency that do not require a UTHSA signature. These include:

1. EB-1(A): Persons of extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who will prospectively be of substantial benefit to the United States. A job offer is not required, and the labor certification is waived.

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2. EB-2 (National Interest Waiver): Aliens of exceptional ability in the sciences, arts, or business whose presence and activities in the U.S. are in the national interest. A job offer is not required, and the labor certification is waived.
3. OIS is not responsible for the filing of the petition with USCIS since no employer sponsor is required, and hiring units are not responsible for any fees or expenses associated with self-sponsored petitions. However, the employee must provide OIS with a copy of the I-140 approval notice for these petitions if OIS is processing an H-1B petition for the employee.

### G. Documentation

Once permanent resident status is obtained, employees are required to provide both OIS and the hiring unit with a scanned copy of the permanent resident card. The foreign national employee must also present University Human Resources with the permanent resident card to satisfy I-9 employment eligibility verification requirements.

## V. Definitions

*There are no defined terms used in this policy.*

## VI. Related References

*There are no related documents associated with this Policy.*

## VII. Review and Approval History

The approving authority of this policy is the University Executive Committee.

Effective Date	Action Taken	Approved By	Effective Date
03/2019	Policy Origination		
12/2024	Policy Revision		