

# Sponsored Employment-Based Nonimmigrant and Permanent Residence Policy

Date

8/20

Item

B.14

## Overview:

Under current U.S. immigration law, when University of Southern Indiana (USI) chooses to make an offer of employment to a foreign national without independent work authorization, USI must proactively pursue legal employment authorization, which may be temporary or permanent. These rules are proscribed in the Immigration and Nationality Act (INA) and the process is controlled by the U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of Labor (DOL). This includes hires directly from universities and colleges, as certain student-authorized employment now requires attention to prevailing wages and contract documentation requirements for USCIS and DOL.

Temporary\* nonimmigrant work status, such as H-1B or F-1 CPT/OPT, does not automatically provide a basis for a future pathway to permanent residence. Due to the complex, challenging and time-consuming nature of immigration casework, USI outsources the legal portion of this work to legal counsel.

## Decision Making Process:

A number of issues affecting clarity can be presented by immigration cases, including: (a) US government required wages can create perceived inequity; (b) start dates may be compromised by government processing times; (c) application and processing fees may be higher for some cases due to timing issues; (d) positions are subject to a technology review as related to federal export control regulations; (e) USI must maintain Public Access Files to document wages and intent to employ H-1B employees; (f) USI must periodically reevaluate policies when the immigration regulations or laws change significantly; and (g) unique circumstances can be reviewed for exceptions.

## Types of Positions USI may support:

### Temporary Employment

Tenure-track faculty

Visiting faculty

Research

Professional (non-faculty)

*\* Temporary Employment may be available for certain nonimmigrants. The most common categories for USI include yet are not limited to F-1 Student OPT or CPT and H-1B.*

## Permanent Employment

Tenure-track faculty (Special Handling)

Research

Professional (non-faculty)

## General Policy:

1. Permanent Residency processing is complex, lengthy, and inherently uncertain; therefore, the hiring department should never indicate that US permanent residency is a guarantee.
2. A request to pursue employment-based permanent residency must be approved by the department chair, director, or dean.
3. The timing to start work on a case is dependent on variables including, yet not limited to: the nonimmigrant status of the employee, the salary offered, the availability of Department of Labor prevailing wage tables, dates and placement of advertising documentation, the date of offer of employment, or the absence of qualified US workers,
4. An appointed individual from Human Resources is the responsible University Official for coordinating the process of obtaining legal employment authorization. New hires are expected to cooperate fully with the collection of necessary information and documentation to allow for appropriate filings. Personal and family preferences will be considered and accommodated whenever possible.
5. Assistance with personal history, family matters, travel considerations, and other non-employment issues which may impact the employer process of obtaining US employment authorization are the financial obligation of the employee.
6. For qualifying faculty positions: whenever possible we will use an existing national job search as the basis for the first step toward establishing a basis for permanent residency. If Special Handling<sup>1</sup> is available, USI will begin the process within the first year of employment and no later than one year after the date of the offer letter.<sup>2</sup>
7. Professional positions may require considerable effort and cost to complete the required market test of potential US workers and may require re-advertising; in some cases additional recruitment steps are needed. For this reason, it is not possible to identify a reliable specific time period to complete the process.
8. Human Resources, individual employees and/or departments currently work with the University's counsel for immigration work.
9. Employees in positions defined as temporary or visiting are not eligible for an employment based petition for permanent residency.
10. All documentation associated with the DOL Permanent Application for Alien Labor Certification (PERM) must be maintained for a period of five (5) years from the date of filing the petition. This includes all application materials submitted in response to a labor test. Currently this documentation is maintained at no addition charge by counsel.

## Timing:

In general, USI moves forward to have a new employee history reviewed immediately upon receipt of a signed offer. The timing of when a government petition is filed depends on a variety of conditions including, yet not limited to: employee ability to provide all of the required documents; current nonimmigrant status; pending applications filed by the employee and any family members; planned travel outside the US; and government processing times.

Government processing times are also carefully reviewed to ensure that employment authorization is uninterrupted. Personal decisions regarding travel outside the US may impact the processing and expediting fees may be paid by the employee should personal circumstances require requesting faster processing.

Renewals for temporary nonimmigrant employment begin about eight (8) months before the ending date, depending on the situation, government processing times, personal plans of the employee, and a variety of other variables. Employment authorization will be extended beyond the current authorization as long as USI has a properly filed Petition pending with the USCIS.

Permanent Residency generally follows a three-step process:

Stage	Preparation Time	Processing Time
Labor Certification	Six months	one-year; up to 2-3 years if audited
Immigrant Petition	2-6 months	6-12 months; subject to longer
Permanent Resident	1-2 months	8-12 months; subject to longer

## Fees:

The University will pay all legal and filing fees for H-1B filings and PERM Labor Certification. Currently, USI pays for the Immigrant Petition filing (I-140) as well. Individual employees are responsible for expenses related to personal documentation, travel, and family matters. Premium Processing fees are paid by USI when necessary to obtain employment authorization due to the timing of an offer and government processing delays. Employees may choose to pay the USCIS expedite fee for personal reasons. Finally, currently individual employees are responsible for the expenses related to the final step, Permanent Resident (Adjustment of Status). Employees are eligible to use the University's attorney.

1. To meet the conditions for Special Handling, the position must have been advertised in compliance with DOL policies for an advertisement in a national journal which includes at least the position title, duties, and qualifications. A Search and Screen committee report must be provided in the supporting materials.
2. The offer letter starts an 18-month window for processing qualifying Special Handling PERM Applications. In general, we also want to have the employee working in a nonimmigrant classification that recognizes the legal concept of "Dual Intent".
3. USI may choose not to move forward with sponsorship at the start of any stage. Preparation and processing times are subject to wide variation.