

Sponsoring International Employees For Permanent Resident Status



Policies And Procedures at UC Berkeley

If possible, please consult with **Ally Martinez, Lead Advisor for Employment Based Services** at (510) 643-4370 or email allywu@berkeley.edu before offering a permanent position to an international employee. Ally will meet with you to discuss filing and documentation requirements, procedures, and timing. If the international employee you wish to hire is on this campus, we request that s/he be present at the meeting.

An international employee who is recruited and appointed by the University in a “permanent” position must eventually obtain permanent resident (PR – “green-card”) status to legally live and work in the United States on a permanent basis. Under provisions of U.S. immigration law, the University may sponsor certain eligible international faculty and academic researchers for lawful permanent residency (L/PR - “green-card” status) by petitioning the U.S. Citizenship and Immigration Services (USCIS – formerly the Immigration and Naturalization Service (INS)). In the context of employment, U.S. immigration regulations define “permanent” as:

“. . . tenured, tenure-track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.” (8 CFR 204.5(i)(2).)

Minimum Qualifications

These are the minimum eligibility requirements for employment-based permanent resident sponsorship at the University:

- The position must be permanent (see definition above).
- The position must be full-time (partial appointments are not eligible for PR sponsorship).
- The position’s salary must meet the prevailing wage rate (applies to labor certification cases).
- The position must require professional-level credentials and skills to perform the job duties.

Generally, tenured and tenure-track eligible faculty appointments (e.g., professor, assistant professor) meet the requirements above. However, it is typically more difficult to establish that a non-tenurable or grant-funded position is permanent (e.g., assistant specialist, associate research scientist). For non-tenurable and grant-funded academic research appointments, the following conditions are also required for consideration of University PR sponsorship:

- Funding to support the position must be available for a minimum of three years. (For example, if the research grant that pays the researcher’s salary expires within 18 months, the University would not be able to proceed with the PR application process.)
- There must be high likelihood that the funding will be renewed well beyond the minimally required three-year period.
- The department must intend to continue to employ the individual for more than three years, provided favorable funding remains available.
- The department must assure the University that there is a reasonable expectation that the individual will remain at Berkeley for more than three years

Timeline

It could take approximately one year or up to several years to secure permanent resident status. Furthermore, there may be other restrictions that would prevent an international employee from obtaining permanent resident status.

Filing Categories

The two most common options for PR University sponsorship are :

- 1) **Labor Certification**
- 2) **Outstanding Professor/Researcher (OPR) immigrant petition.**

In both instances, two or three distinct steps involving a series of petitions and applications filed with and adjudicated by state and federal agencies need to be completed successfully in order for an international faculty/researcher to ultimately be granted permanent residency status. Each of these petitions and applications requires specific (and different) types of supporting documentation (see reverse for more details).

The Labor Certification (LC)

The Labor Certification (LC) requires documenting the recruitment and selection process to show that there were insufficient numbers of U.S. workers available for employment, and that no U.S. workers' salaries or working conditions were adversely affected by hiring an international employee. A "U.S. Worker" is defined as a citizen or permanent resident. This process entails that (i) the University obtain a labor certification approved by the U.S. Department of Labor (DOL); (ii) the University then files a PR immigrant petition with the U.S. Citizenship and Immigration Services (USCIS); and finally (iii) the faculty beneficiary applies for permanent resident status for him or herself and any immediate family members either as part of the University's PR petition (called concurrent filing) or after the University's PR petition is approved. When the USCIS approves the faculty beneficiary's application, the faculty is granted lawful permanent resident status.

Note that for non-faculty, non-teaching appointments, DOL/LC rules require that the Labor Certification **cannot** be approved if **any** U.S. worker applicant meets the **minimum** requirements for the position, as advertised in the recruitment documentation. This means that if any U.S. worker, who applied for the position, possesses qualifications that meet the job's minimum requirements, the DOL, by law, will not approve the LC. Also note that any experience gained while working at the University cannot be applied toward the minimum work experience requirement.

On the other hand, "Special Handling" provisions of DOL/LC regulations that apply specifically to faculty/teaching appointments require that the University document that the international faculty member was the most highly qualified candidate of the applicant pool – that is, there were no U.S. worker applicants who were more qualified.

Labor Certification Deadline

Faculty/Teaching Positions

There are several steps before the labor certification can be filed. BIO recommends initiating a permanent residence inquiry as soon as possible and no later than **6 months** after the date of selection. Labor certification requests must be filed with the U.S. Department of Labor (DOL) within 18 months from the date of selection.

If these deadlines are missed, recruitment must occur again before submission of a labor certification request.

The Outstanding Professor/Researcher (OPR) Petition

To file an OPR petition, the University needs to provide clear, substantive documentation of a broad-based international recognition of the faculty/academic researcher's outstanding achievements. Immigration rules set forth specific criteria to be addressed, including substantive record of research publications, the receipt of major international awards or prizes, review activities such as serving on editorial boards of international, peer-reviewed journals, significant international acknowledgment of the individual's research contributions to the academic field, etc.

Finally, please note that there are two temporary non-immigrant visa/status categories (J-1 and H-1B) that allow an international employee to work here for several years without the need to obtain immigrant (PR) visa/status. Please contact the Berkeley International Office for additional information.