Operating Policy and Procedure

OP 70.38: Employment-based Permanent Residency Petitions

DATE: August 19, 2015

PURPOSE: This Operating Policy and Procedure (OP) sets forth the policy and procedures for sponsorship of a current or prospective foreign national employee of the university for an employment-based permanent residency petition.

REVIEW: This OP will be reviewed in July of each year by the vice provost for international affairs and the managing director of Human Resources with substantive revisions forwarded to the senior vice provost and the chief of staff to the president.

POLICY

Texas Tech University will maintain a system for review and approval of employer applications to be filed with the U.S. Department of Labor and the U.S. Citizenship and Immigration Services concerning employment-based permanent residency petitions for current or prospective foreign national employees of the university.

1. Definitions
   a. Lawful Permanent Resident
      A foreign national who is lawfully admitted to the U.S. as an immigrant. Other common terms for this status include permanent resident, resident alien, and green card holder.
   b. Foreign National
      A person who was born outside the jurisdiction of the United States, is a citizen of a foreign country, and has not become a naturalized U.S. citizen under U.S. law.
   c. Employment-based Permanent Residency Petition
      Petitions requiring sponsorship by a U.S. employer based on an offer of full-time, permanent employment.
   d. Employment-based Permanent Residency Petitions Sponsored by TTU
      (1) EB-1 Outstanding Professor/Researcher
      (2) EB-2 Professionals holding advanced degrees
      (3) Application for Alien Labor Certification (PERM/Special Handling)
      (4) EB-3 Professionals/Skilled Workers
e. Nonimmigrant

One who does not have the intent of remaining permanently in the U.S. and can overcome the statutory presumption that he/she is an immigrant.

f. Dual Intent

Persons who hold both a short-term intent to enter the U.S. in nonimmigrant status and a long-term intent to remain permanently. Presently, only those persons holding the following status are allowed to enter and remain as non-immigrants while pursuing permanent residency: H-1B, E, L, O, and P.

2. Petition for Permanent Residency

a. Prior to commencing an employment-based permanent residency petition for a foreign national employee, the Office of International Affairs (OIA) will confirm that the foreign national employee holds nonimmigrant status that allows for dual intent. If the foreign national employee’s status does not allow for dual intent, OIA will attempt to change the foreign national employee’s status to one that will not be contrary to a permanent residency filing.

b. TTU OIA is responsible for directly handling only the permanent residency related forms listed below:

   (1) I-140, Immigrant Petition for Alien Worker
   (2) ETA 9089, Application for Alien Labor Certification (PERM)/Special Handling
   (3) Any letters on institution letterhead relating to immigration sponsorship

Any other form not listed above, such as I-539, I-485, I-864, DS-156, N-400 is the sole legal responsibility of the individual signing the form.

c. Employment-based permanent residency petitions for foreign nationals at TTU will generally be limited to specific faculty and research positions with the following job titles: Professor, associate/assistant professor, research assistant professor, research associate, senior research associate, or other job title that is permanent in nature. Due to the complexity of the immigration laws, consideration in submitting employment-based permanent residency petitions for positions that do not qualify under the categories listed above will be determined by OIA on a case-by-case basis by special request.

d. A foreign national employee may elect to seek permanent residency status on his or her own if the permanent residency petition does not require employer sponsorship.

PROCEDURES

1. Texas Tech departments and employing units complete a Request for Employment or Visit of a Foreign National form (see attachment) and forward it to the dean and provost and senior vice president or the appropriate department head and vice president for approval. The form then should be filed with the OIA.
2. The OIA will coordinate the collection of information and supporting documents and the preparation of applications and petitions related to the immigrant application process.

   a. The OIA will coordinate with the employing department and the prospective immigrant the determination of the most appropriate procedures for the immigrant application process.
   
   b. If appropriate, the Department of Labor form ETA 9089, *Application for Permanent Employment Certification*, will be produced for labor certification. The OIA has signature authority for form ETA 9089.
   
   c. The OIA will prepare and sign form I-140, *Immigrant Petition for Alien Worker*. The employing department is responsible for payment of required immigration fees.

3. Preparation of labor certifications and immigrant applications based on employment are the responsibility of the employer. Although an immigration attorney representing the employee may cooperate in the preparation of applications by providing assistance and advice to the employee, university representatives must not sign a *Notice of Entry of Appearance as Attorney or Representative*, form G-28, authorizing the employee's attorney to act for the university.

4. These policies and procedures do not relieve foreign national employees or prospective employees of their responsibilities in maintaining their immigration status, nor do they limit the employee's right to be represented by competent legal counsel.

   *Attachment: Request for Employment or Visit of a Foreign National*