Permanent Residency at UVA

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WHAT DOORS CAN PERMANENT RESIDENCY OPEN?
WHICH STATEMENTS ARE TRUE AND WHICH ARE FALSE ON THE BENEFITS OF PERMANENT RESIDENCY?

• One can now vote?
• One can commit crimes without being afraid of being deported?
• One can quit UVA as soon as receiving permanent residency?
• One can travel outside the United States whenever and wherever and for however long he or she wants?
• It is a crime to not carry the permanent residency card.
• One must have a job to remain in the United States?
• One cannot be removed from the United States?
• The Green card is actually green?
• One can easily bring in family members?
• One can now get welfare benefits?
SO WHY SHOULD ONE OBTAIN PERMANENT RESIDENCY?

1. Freedom to work whenever and wherever one chooses
2. No more consular interviews and easier entry and exit
3. Easier access to grant money
4. Better jobs
5. Ability to sponsor spouses and children
6. Citizenship eligibility in 5 years
7. No more uncertainty from employer or even family sponsorship
8. Certain protections from removal
HOW DOES ONE OBTAIN PERMANENT RESIDENCY

- Through Employment Sponsorship
- Through Family Sponsorship
- Through Asylum, Refugee, or Immigration Court Procedures
- Through the Diversity Visa or Visa Lottery
EMPLOYMENT SPONSORED PERMANENT RESIDENCY AT UVA

• Two step process
  • University files an I-140 Immigrant Visa Petition with or without an approved labor certification (depending in visa category)
  • Individual files an I-485 Adjustment of Status application to change from nonimmigrant status to a permanent resident (this is the individual’s own application)
• We prefer to wait for the I-140 to be approved prior to the individual filing for adjustment of status.
I-140 VISA CATEGORIES – MANY ROADS TO SAME RESULT

- First Preference
  - E11 – Alien with extraordinary ability (no labor certification required)
  - E12 – Outstanding ability professor or researcher (no labor certification required)
  - E13 – Multi-national executive (no labor certification required)

- Second Preference
  - E21 – An alien with an advanced degree or who is an alien of exceptional ability (position must require an advanced degree or exceptional ability, and requires a labor certification)
    - Includes “Special Handling” cases for college teachers
  - NIW – An alien applying for a national waiver (no labor certification required) who holds an advanced degree or who is an alien of exceptional ability

- Third Preference
  - E31 – Skilled Worker
  - E32 - Professional
SO WHICH IS THE RIGHT PATH FOR THE DEPARTMENT?

• Simple answer is Trust in Me!!
• We have simplified the Request for Permanent Residency packets into one packet, there are no longer different packets for different types of permanent residency sponsorship.
• Once a department and employee decide on proceeding with permanent residency, the department completes the permanent residency packet and the department, employee, and our office will meet together to decide the proper course.
• There is now one fee for all permanent residency processes.
• But, we also do not want to leave you in the dark, so let’s examine common permanent residency types at UVA.
WHICH CATEGORY TO CHOOSE?

- UVA generally files under the following categories
  - First Preference - Outstanding Ability
  - Second Preference – Advanced Degree Holders using “special handling” labor certifications
- UVA will sometimes file under other categories
  - Second Preference – National Interest Waivers
  - Third Preference – Professional Workers (only rarely)
- UVA only sponsors for permanent, full-time positions. Post-Doctoral Fellows and Residents do not qualify. Promotion to Research Scientist will allow for sponsorship.
WHAT CONSIDERATIONS FACTOR IN CHOOSING A PARTICULAR PATH?

- Country of origin
- Time since selection date for teaching faculty if there was a selection date
- Department and employee preferences
- Subjective review of employee’s qualifications

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SOME OF THE COMMON PATHS AND REASONS TO CHOOSE THAT PATH

- **E12 – Outstanding Professor or Researcher**

  In general, the petition must be accompanied by evidence that:
  - 1. The beneficiary is recognized internationally as outstanding in a specific academic area;
  - 2. The beneficiary has at least 3 years of experience in teaching or research in the academic area; and
  - 3. The beneficiary seeks to enter the United States for a:
    - Tenured Position (or tenure track position) within a university or institution of higher education to teach in the academic area;
    - Comparable position with a university or institution of higher education to conduct research in the area; or
    - Comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.
PROS AND CONS OF OUTSTANDING ABILITY

• Does not require a labor certification – meaning no advertising needed
• Can result in permanent residency much faster
• Only real option available to those from India and China
• The application is amendable
• It is approved or denied based on a subjective analysis from USCIS examiners as to whether the employee has international acclaim
• Requires more work from the departments and employees
• Employee must obtain expert opinion letters from outside UVA
SOME OF THE COMMON PATHS AND REASONS TO CHOOSE THE PATH

- E21 – Members of the Professions holding Advanced Degrees or Aliens of Exceptional Ability (not seeking a National Interest Waiver)

- Special Handling Advanced Degree:

  - In general, the petition must be accompanied by evidence that:
  - 1. The job for which the beneficiary is being petitioned for requires at least an advanced degree or its equivalent;
  - 2. The beneficiary actually possess the advanced degree or its equivalent; and
  - 3. The Department of Labor (DOL) has certified there are not qualified U.S. workers who applied for the position.
  - 4. The beneficiary is the most qualified applicant
SPECIAL HANDLING ADVANCE DEGREE REQUIREMENTS

- Labor Certification from the Department of Labor
  - Limited to Advance Degree Positions
  - Limited to college professors and teachers – must be some classroom teaching component as part of duties and these must be included in the advertisement
  - Must be applied for within 18 months of selection date
  - Advertisements must have been in national print ad or in online journal for 30 days – all preferences in ad are considered requirements for the labor certification
  - A prevailing wage must be obtained from the Department of Labor
  - A notice must be posted for 10 business days advising the public that a labor certification is in process
  - Selection committee must make a report why employee was the most qualified of the eligible applicants
  - Department must document the employee’s qualifications
- University files I-140 showing the employee meets the advertised requirements
PROS AND CONS OF SPECIAL HANDLING ADVANCED DEGREE CASES

• Less subjective analysis by USCIS examiners
• Less paperwork and involvement by the departments and employees
• We are able to use prior advertisements and recruitment
• Can only be applied for in the first 18 months after employee selection date
• Cannot be amended in any way, any mistake is fatal to the application
• Not a good option for natives of China and India
SOME OF THE LESS COMMON PATHS AND REASONS TO CHOOSE A PATH

• Other paths that can be explored for permanent residency applicants that cannot take advantage of the Outstanding Ability or Special Handling paths include:
  • Second Preference – National Interest Waiver cases
  • Second and Third Preference – Non Special Handling or Normal Labor Certification cases
• Some employees can even choose to apply for permanent residency through self-sponsorship
NATIONAL INTEREST WAIVER REQUIREMENTS

• National Interest Waivers – NIW

• If the services provided by a member of the professions holding an advanced degree or an alien of exceptional ability are determined to be in the national interest, the requirement of a job offer, and thus of a labor certification, may be waived.


• NYSDOT outlined three prongs which must be met to qualify for a NIW:

  1. The individual seeks employment in an area of substantial intrinsic merit.

  2. The proposed benefit will be national in scope.

  3. The individual will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.
2\textsuperscript{nd} AND 3\textsuperscript{rd} PREFERENCE THROUGH LABOR CERTIFICATIONS

- The only options available for professional positions with no teaching component
- 2\textsuperscript{nd} preference is for positions requiring at least a Master’s degree
- 3\textsuperscript{rd} preference is for positions requiring at least a Bachelor’s degree
- Cannot use previous advertising
- Beneficiary must be willing to be placed back in the applicant pool
- We can only proceed if the beneficiary is the only minimally qualified applicant
HOW TO START A PERMANENT RESIDENCY CASE?

1. Review the “Permanent Residency Packet” on our website (I can also e-mail you a copy)
2. Preferable to set up a meeting with me, the beneficiary, and the department to review the best option
3. Obtain necessary department chair and dean approvals to begin the process
4. We will then work on navigating the bureaucracy to obtain permanent residency as soon as possible
PERMANENT RESIDENCY COSTS

• Compliance and Immigration Services Fee: $2,000
• Compliance and Immigration Services Express Fee: $500
• USCIS I-140 Fee: $580
• USCIS Premium Processing Fee: $1,225
• USCIS I-485 Fee (per person): $1,070
• Private Attorney Fee for I-485 (generally not needed) $1,500
NEW AND UPCOMING DEVELOPMENTS FOR PERMANENT RESIDENCY

• Department of Labor recently started accepting on-line recruitment for “special handling” labor certifications
  • Ads must run for 30 days
  • Ads must be in a professional journal related to field
  • Greystone is already charging a fee for monitoring the advertising
• USCIS has become much tougher on Outstanding Ability cases
• Congress is contemplating a change to award permanent residency to advanced degree U.S. graduates of STEM programs
• Congress is contemplating making E-Verify mandatory for all
• Congress is contemplating doing away with employment based visa number restrictions