

Youngstown

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Obtaining U.S. Permanent Residency

Introduction

All nonimmigrant faculty and staff should check with their department chairperson to begin the permanent resident process. It is Youngstown State University's commitment to pursue the approval necessary for our international tenure-track faculty to apply for adjustment to permanent residency by virtue of their appointment at YSU. For non-faculty, permanent residency will be pursued on a case-by-case basis.

The university pays filing fees only for those petitions for which Youngstown State University is the petitioner. The employee pays the filing fees related to those petitions in which the foreign national employee is the petitioner, along with dependents' petitions (if any) and attorney's fees (if the employee chooses such representation in those petitions).

Step 1: Labor Certification

Labor certification is a recruitment process whereby the employer determines, to the satisfaction of the Department of Labor (DOL), that there are no U.S. citizens or permanent residents who are able, willing, qualified and available for the position. In an effort to protect the job market for U.S. citizens and permanent residents DOL requires documentation of national advertising of a position vacancy and of the selection process.

Tenure-track faculty positions

Tenure-track faculty positions may be eligible for 'special handling'. Special handling allows the hiring department to make an offer of employment to the best qualified applicant without regard to citizenship or residency status. This follows normal hiring procedures at the university. An original advertisement from a national journal must be kept on file for this process. Labor certification for faculty is based on advertising already completed by the employer. Special handling labor certification applications must be filed with DOL within 18 months of the offer date. Applications for labor certification are submitted online with DOL. Documentation must be kept concerning the advertisement, recruitment and hiring for audit purposes. The online process has greatly reduced processing time of these applications. Approximate processing time is 2-6 months.

Non-faculty positions

New DOL regulations published in March 2005 require additional advertising for regular labor certification applications. This advertising goes beyond the normal advertising practices for such positions at Youngstown State. At Youngstown State, labor certification applications will only be filed on the basis of a strong justification as well as an assurance of continuing support from the hiring department. Applications on behalf of "Visiting" positions and "Post-Doctoral" appointments will not be supported as these positions are not permanent positions.

Please note: An approved labor certification does not provide employment authorization or permission to remain in the U.S. permanently. Nonimmigrant status must be maintained during this time period and the beneficiary must have valid work authorization to continue employment.

Step 2: Immigrant Visa Petition Approval (I-140)

USCIS Forms used during this step:

- * Form I-140

Professionals Holding Advance Degrees (EB-2)

With an approved labor certification from DOL an immigrant visa petition may be submitted to the U.S. Citizenship and Immigration Services (USCIS). Within this petition the employer demonstrates that an offer of employment is being made to the nonimmigrant applicant and that they are financially able to pay the wage offered.

Documentation must be provided showing that the beneficiary meets the education and experience qualifications required for the position as described in the labor certification application. Approximate processing time for this step is 4-12 months.

Outstanding Professor and Researchers (EB-1)

A department that wishes to apply for permanent residency for a beneficiary based on the individual's merit as an outstanding professor or researcher must have a permanent job offer within the department. This option does not require labor certification through DOL. The application for the outstanding professor or researcher is sent directly to USCIS for review.

Qualifications for an Outstanding Professor Researcher Application

- 1. The individual must have at least 3 years of experience and/or research in the academic field. (Experience gained in teaching and research during the course of work on an advanced degree may only be accepted if the individual has acquired the degree and s/he had full responsibility for classes taught or if the research conducted was recognized as outstanding within the academic field.)*
- 2. The individual must be offered a permanent position. This may be a tenure or tenured track position or a permanent research position. "Permanent" has been defined as a period of indefinite or unlimited duration in which there is an expectation of continued employment, unless there is good cause for termination. Applications will not be made for "Postdoctoral" or "Visiting" positions as they are not considered to be permanent.*
- 3. The individual must be recognized internationally as outstanding in a specific academic area. This recognition must be evidenced by at least two of the following criteria.*
 - a. Receipt of major prizes or awards for outstanding achievement in the academic field;*
 - b. Membership in associations in the academic field which require outstanding achievement of their members;*
 - c. Published material in professional publications written by others about the applicant's work in the academic field;*
 - d. Participation on a panel, or individually, as the judge of the work of others in the same or an allied academic field;*
 - e. Original or scholarly research contributions in the academic field; or*
 - f. Authorship or scholarly research contributions to the academic field.*

Please note: An approved Form I-140 does not provide employment authorization or permission to remain in the U.S. permanently. Nonimmigrant status must be maintained during this time period and the beneficiary must have valid work authorization to continue employment.

Step 3: Adjustment of Status to Permanent Residency (I-485) or Immigrant Visa Processing

If an immigrant visa is available for the beneficiary an application to adjust to permanent resident status in the United States may be submitted with an approved I-140. In some cases, the I-485 application may be filed concurrently with the I-140. The beneficiary may also choose to apply for the immigrant visa at a U.S. embassy/consulate in his/her home country. This decision should be made when the I-140 is filed with USCIS.

Both the adjustment of status application and the immigrant visa application is the responsibility of the beneficiary to complete and submit. Legal counsel may be sought if assistance is needed. Youngstown State University is not responsible for the adjustment of status or the immigrant visa applications.

Adjustment of Status

USCIS Forms used during this step:

- * Form I-485 (Application to Register Permanent Residence or Adjust Status)*
- * Form I-131 (Application for Advance Parole/Travel Document)*
- * Form I-765 (Application for Employment Authorization Document)*
- * Form G-325A (Biographical Data Sheet)*
- * Form I-693 (Report of Medical Examination and Vaccination Record)*

An application for adjustment of status (I-485) contains various forms. The following website details the forms needed for this application.

<http://www.uscis.gov/>

Once the application has been submitted to USCIS a receipt will be mailed to the beneficiary for each application submitted. The beneficiary will receive a notice for fingerprinting within 2-3 months of submitting the application. Instructions will be given as to where and when the fingerprints will be taken.

Processing time for this application is approximately 18-24 months. Processing times and case status' may be checked at the following website: <http://www.uscis.gov/portal/site/uscis/>

During the adjustment of status process it is advisable for an individual to maintain his or her H-1B/H-4 non-immigrant status. H visa status allows for dual intent. Dual intent allows an individual to be in the U.S. on a non-immigrant visa but have intentions to immigrate. This individual may travel during the adjustment process with a valid passport, valid H visa stamp and current Form I-797 approval notice without affecting the underlying I-485 petition for permanent residency.

In all cases, the foreign faculty member should choose to apply for an employment authorization document (EAD) and a travel document known as "advanced parole". These applications may be submitted along with the I-485 application or afterwards. The EAD card will be issued within 90 days and the travel document in approximately the same time frame. The forms needed for these processes are the Form I-765 for the EAD card and the Form I-131 for advance parole. These may be downloaded from the web.

Immigrant Visa Processing

In some cases, a nonimmigrant employee may opt to apply for an immigrant visa abroad in lieu of adjusting status to permanent residence within the United States. When an I-140 has been approved and immigrant visa processing is indicated on the I-140 application, the National Visa Center (NVC) will correspond with the beneficiary concerning the immigrant visa process once an immigrant visa number is available for that individual. Processing time varies with each US embassy/consulate. The beneficiary must follow the instructions given by the NVC and the US consulate where he/she will be interviewed. It is advisable for the beneficiary to check with the U.S. consular post for details concerning this process. Most consulates have helpful information on their websites.

After the US consulate or embassy has received and reviewed the application an interview will be scheduled. The beneficiary will need to make plans to have a medical exam completed in his/her home country with a physician approved by the U.S. consulate before the interview. The interview will take place at the notified consulate. At the time of the interview, if the applicant is approved he/she will be given a packet to present at the port-of-entry upon returning to the U.S. At the port-of-entry the immigrant visa in the beneficiary's passport and the passports of all dependents will be adjudicated/stamped to indicate that they have been admitted as lawful permanent residents. The actual "green card" will be mailed to the beneficiary sometime after his/her entry into the US.