

POLICY ON SPONSORSHIP FOR LAWFUL PERMANENT RESIDENCE "GREEN CARDS"

GENERAL POLICY:

It is Florida Atlantic University's (the "University") policy that the employment of foreign personnel shall be in full compliance with the provisions of the Immigration Reform and Control Act of 1986, as amended from time to time.

APPLICABILITY/ACCOUNTABILITY:

The appropriate Vice Presidents are responsible for ensuring that the federal, state, and university policies are followed regarding the employment of foreign personnel within their respective areas.

Throughout all periods of employment by and with the University, it is the individual's responsibility to maintain a lawful status that provides for employment eligibility.

OVERVIEW:

There are several ways to obtain permanent residence. The most common are through

- immediate relatives who are U.S. citizens or permanent residents
- employment

This policy focuses solely on employment-based procedures for obtaining permanent residence that are relevant to the University. Specifically, this policy covers only the first (extraordinary ability and outstanding professors or researchers), second (exceptional ability/national interest waiver), and third (PERM) employment-based preferences.

Congress has designated those groups to which it gives preference in immigrating to the United States. The first three employment-based preferences include:

- The first employment-based preference (EB-1) includes:
 - outstanding professors and researchers
 - individuals of extraordinary ability in the sciences, arts, education, business and athletics

No labor certification is required for either category. The outstanding professor or researcher category requires the offer of a tenured or tenure-track teaching position or the offer of a comparable permanent position. For research positions, applicable regulations define “permanent” as being either tenured, tenure-track, or for a period of indefinite or unlimited duration. The extraordinary ability category does not require a job offer.

(Note: By virtue of this particular definition of “permanent”, OPS and like positions do not qualify for sponsorship under this category.)

- The second employment-based (EB-2) preference includes
 - individuals of exceptional ability
 - advanced-degree professionals

A labor certification and a job offer are required, unless they are waived in the national interest.

- The third employment-based preference (EB-3) includes:
 - PERM (Special Handling)
 - PERM (Regular)

A labor certification and a job offer are required for the third employment-based preference.

REASON FOR POLICY:

The University shall ensure compliance with and consistency in the application of pertinent Department of Labor and Department of Homeland Security regulations.

DEFINITIONS:

Permanent resident status or the “green card” grants foreign nationals the right to live and work in the United States indefinitely.

PERM - the process through which the University establishes that there are no U.S. workers ready, willing and able to accept the position offered.

POLICY STATEMENT:

Permanent (immigrant) foreign personnel visas:

The University's sponsorship of foreign personnel for immigrant (permanent) visas will not be considered until such time as the foreign employee has completed the appropriate period of service, as follows:

- Academic Positions (Teaching) - One-year of full-time employment. Full-time employment will be defined as one academic year (at least nine months).*
- Administrative Positions - One-year of full-time employment. Full-time employment will be defined as twelve (12) consecutive months.
- Non-Academic Positions - The University requires at least three (3) continuous years of full-time service before sponsorship will be undertaken. In addition, if a grant funded position, grant funding must be in place for at least five (5) years.)

* The University may initiate permanent residence sponsorship prior to completion of the first academic year; however, the application will not be filed until such academic year has been completed. This exception only applies to academic positions in order to meet the Department of Labor's PERM "Special Handling" requirement of filing the Labor Certification within 18 months of the date that the offer letter was issued.

Waiver of these requirements shall be authorized only by the Vice President of the particular administrative office and only in those cases demonstrating that compliance with the requirement would cause extreme hardship. Once the individual ceases employment with the University, the University must discontinue its sponsorship of the individual for the immigrant visa.

EXPENSES:

Effective July 16, 2007 and pursuant to applicable Department of Labor regulations, Florida Atlantic University will pay all costs, including legal fees, for preparing, filing, and obtaining labor certification for the sponsorship of a foreign employee. However, the University will not be responsible for the payment of any attorney's fees or costs associated with the remaining steps of the sponsorship process, namely the Form I-140 (Step 2) and Form I-485 (Step 3). Furthermore, in those cases not requiring a labor certification, the University will not be responsible for the payment of any attorney's fees or costs associated with the sponsorship of a foreign employee for Lawful Permanent Residence ("Green Card"). No exceptions will be made to this policy, unless required by law.

PROCEDURES:

1. Individuals of Extraordinary Ability

The U.S. Citizenship and Immigration Services (USCIS) regulations permit an individual to establish eligibility as an individual of extraordinary ability by providing evidence of:

- receipt of a major, internationally recognized award, such as the Nobel Prize or an Academy Award, or
- at least three of the following forms of documentation
 - receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
 - membership in associations in the field which require outstanding achievements of their members
 - published material in professional or major trade publications or major media about the foreign national's work in the field
 - participation on a panel or individually, as a judge of the work of others in the field
 - scientific, scholarly or business related contributions of major significance in the field
 - authorship of scholarly articles in the field in professional journals or other major media
 - employment in a lead, starring or critical role for organizations and establishments that have a distinguished reputation
 - high salary or other remuneration commanded by the foreign national for services in relation to others
 - commercial successes in the performing arts
 - other comparable evidence

2. Outstanding Professors and Researchers

The U.S. Citizenship and Immigration Services (USCIS) regulations permit a professor or researcher to establish eligibility under this category by submitting evidence of at least two of the following:

- documentation of receipt of major international prizes or awards for outstanding achievement in the academic field
- documentation of membership in associations in the academic field that require outstanding achievements of their members
- published material in professional publications written by others
- evidence of participation, on a panel or individually, as the judge of the work of others in the field
- evidence of original scientific or scholarly research contributions in the field
- evidence of authorship of scholarly books or articles in journals

3. Individuals of Exceptional Ability or Advanced Degree Professionals (National Interest Waiver)

In order to qualify for permanent residence through one of these categories, an individual must undertake a two-step process. The first step is to establish that the individual is either an individual of exceptional ability or an advanced degree professional. The second step is to establish that waiver of the labor certification and job offer requirements are in the national interest.

In order to establish exceptional ability, an individual must submit evidence of at least three of the following

- an official academic record showing that the individual has a degree, diploma, certificate or similar award from a college, university or other institution of learning relating to the area of exceptional ability
- evidence in the form of letters from current or former employers showing that the individual has at least ten years of full-time experience
- a license to practice the profession or certification for a particular profession or occupation
- evidence that the individual has commanded a salary which demonstrates exceptional ability
- evidence of membership in professional associations
- evidence of recognition for achievements and significant contributions to the industry or field

In order to establish that an individual is an advanced degree professional, the individual must prove that they possess any U.S. academic or professional degree (or foreign equivalent) above a bachelor's degree level.

Once the individual has established that he/she has exceptional ability or an advanced degree, he/she must then prove that waiver of the labor certification and job offer are in the national interest. In order to do this, an individual must establish that employment will be in an area of substantial intrinsic value, that the proposed benefit will be national in scope and that the national interest would be adversely affected if a labor certification were required.

4. PERM (Special Handling)

The University's teaching staff qualify for processing pursuant to special handling regulations issued by the U.S. Department of Labor. Special Handling refers to a streamlined process based on recruitment that has already taken place before the application is filed as opposed to recruitment. The application must be filed within 18 months of the date the offer for the position was made. Additionally, the advertising for the position must have been in a national print journal.

5. PERM (Regular)

In general, full-time University employees who do not qualify for permanent residence in one of the above categories must process a PERM labor certification. This process entails advertising the position as stipulated by pertinent U.S. Department of Labor regulations.

The University's immigration attorneys review "Permanent Residence" applications for form and substance.

RELATED INFORMATION:

Congress has limited the number of foreign nationals who can immigrate under the first three employment-based preferences to 120,000 per year. In addition to this worldwide limit, there is also a per country limit on the number of persons who can emigrate from any particular country in one year. This means that, if demand for visas is too great, visas may not be immediately available for a particular country. This is particularly the case for Chinese and Indian nationals. When this situation arises, the Visa Office of the Department of State keeps a waiting list for persons registered to emigrate from the backlogged countries. A person's place on the waiting list is determined by their "priority date," which is the date on which the foreign national took the first step toward filing permanent residence papers with the U.S. government.

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