

**GUIDELINES FOR
LSUHSC/NO SPONSORSHIP OF
EMPLOYMENT BASED PERMANENT RESIDENCE
(LSUHSC-40, Revised 9/2012)**

In accordance with PM-26 and after appropriate institutional approvals, the LSUHSC/NO (hereinafter referred to as University) may sponsor full time “permanent” employees in certain academic positions (Assistant Professor, Associate Professor, and Professor) for employment based permanent residence. “Permanent” is considered a position with no definitive termination date, is not seasonal or intermittent employment, and not intended to end at a specified date into the future. Some annual appointments may be included within this definition if usually renewed indefinitely pending satisfactory performance and continued funding. The University requires a department to identify secure funding for such positions a minimum of three years into the future in order to initiate permanent residence sponsorship request.

When authorized to sponsor an employee for permanent residence, the University will be required to make a substantial commitment of resources. Therefore, the University will sponsor a foreign national for permanent residence only when there is a reasonable expectation that the individual will remain in the position indefinitely.

In accordance with PM-26, the University does not sponsor clinical trainees or staff in non-academic positions. U.S. immigration laws do not permit sponsorship of students, part-time or temporary employees for permanent residence.

It is important to note that University “sponsorship” *does not necessarily include sponsorship of application or legal fees*. It simply means the University agrees to act as the “sponsor” in an employment based petition. *The employee will be required to pay for all application and/or legal fees unless it is determined a Labor Certification is beneficial to the University. Should Labor Certification be approved, the sponsoring department will be responsible for all legal fees relating to the labor certification. In all labor certification filings, retention of the University immigration counsel by the International Services Office is mandatory. Following labor certification approval, the legal and application fees for necessary subsequent petitions including the I-140, I-485, I-765, I-131, I-539, etc. remain the responsibility of the beneficiary applicant.*

EMPLOYMENT BASED PERMANENT VISA APPLICATION CATEGORIES MOST COMMONLY UTILIZED AT THE LSUHSC

Extraordinary Ability in the Sciences – This classification is reserved for aliens who have sustained national or international acclaim in the sciences, arts, education, business, or athletics. Congress intended this classification to be for “that small percentage of individuals who have risen to the very top of their field of endeavor”. The petition must be accompanied by evidence to prove national or international recognition and acclaim. A major, internationally recognized award such as a Nobel Prize or Academy Award is sufficient to prove extraordinary ability. *This category may be self-petitioned without University approval. The beneficiary applicant remains responsible for all application and legal fees. All letters of recommendation prepared on University letterhead in support of self-petitioned applications are to be reviewed by the International Services Office (ISO) prior to issuance.*

Advanced Degree Holder with National Interest Waiver – The alien must be seeking employment in an area of substantial intrinsic merit and is possible if it can be demonstrated the

work performed is in the national interest and the continued presence of the alien is crucial to the on-going work. A letter from an interested U.S. government agency recommending the waiver is very useful. *This category may be self-petitioned without University approval. The beneficiary applicant remains responsible for all application and legal fees. All letters of recommendation prepared on University letterhead in support of self-petitioned applications are to be reviewed by the International Services Office (ISO) prior to issuance.*

Outstanding Professor and/or Researcher: Demonstration that a sponsored employee (tenured or tenure track faculty and/or permanent research position) has an exceptional record of scholarly achievement in his/her field; more than three years of teaching and/or postdoctoral research experience; a very strong record of publications; superlative evaluations by recognized experts in the field; and the receipt of prizes, awards, or other forms of professional recognition are usually required to obtain approval of an outstanding professor/researcher petition. Simply being able to assemble the required types of evidence outlined above is insufficient to succeed in this category. The evidence must actually demonstrate the employee is outstanding. *This category requires University approval, however the beneficiary applicant remains responsible for all legal and application fees.*

Labor Certification (Regular Handling) – Should an employee not meet the requirements for Outstanding Professor/Researcher or if the faculty member is research only with no teaching component, the University can apply to the Department of Labor for labor certification. A labor certification is a test of the U.S. labor market proving there is no U.S. citizen or U.S. permanent resident who meets the minimum education, training and experience requirements to perform the job duty. This is done through a special advertising process. The University must also meet Department of Labor salary requirements in order to obtain an approved labor certificate. If granted, a labor certification permits petition for permanent residence to USCIS. Once salary (or “prevailing wage”) requirements are met, most University applications for labor certification in the academic job categories succeed, since the positions in question generally require high levels of education and specialized experience in short supply in the domestic labor pool. *This category requires University approval, with legal fees the responsibility of the sponsoring department.*

Labor Certification for Faculty Teaching Positions (Special Handling) – The University can apply to the Department of Labor for labor certification under “special handling” rules for faculty in teaching positions (Assistant Professor, Associate Professor or Professor). Under “special handling” rules, the University is not required to demonstrate there are no qualified U.S. citizens or permanent residents available for the position, *but only that the appointee was the best qualified applicant.* The University can usually meet this requirement by presenting the Department of Labor details of the recruitment process that led to the faculty appointment. *This category requires University approval, with legal fees for the Labor Certification portion only the responsibility of the sponsoring department.*

Note: Labor certification applications under “special handling” must be filed with the Department of Labor within eighteen months of the sponsored employees’ selection for the position. Some schools within the University require an individual to be employed for a minimum of one year prior to allowing permanent residence sponsorship. As a result, this eighteen month window should be monitored closely.

REQUIRED PROCESS TO SPONSOR FOR PERMANENT RESIDENCE

In order to obtain appropriate authorization for a University sponsored Permanent Residence petition, the requesting department should:

- complete form LSUHSC-40 (Prior Approval for LSUHSC to Support Permanent Residence Status)
- prepare a comprehensive one- to two-page request/justification letter describing the beneficiary's background, training, education, current title, teaching component, appointment date and contributions to the LSUHSC. This letter should confirm the sponsoring department has secure funding to support the position for a minimum of three years into the future in order to initiate permanent residence sponsorship request.
- prepare a separate outline of the recruitment process that took place to hire the employee, including length and location of advertisement; total number of applicants for the job opportunity; and specific reasons why the beneficiary was more qualified than each U.S. worker or permanent resident who applied for the job. ***Attach both a copy of the actual advertisement and final letter of offer.***
- The LSUHSC-40, letter, recruitment outline and recent C.V. illustrating the beneficiary's publications, awards, memberships and other key accomplishments and qualifications, as well as any other supporting documents must be ***submitted directly to the International Services Office for routing to obtain appropriate authorization.***

Provided the request is in accordance with PM-26 and approved by the Dean and Chancellor, a meeting will be scheduled with the beneficiary employee to outline the procedures for initiating an application and payment of legal fees (if applicable for Labor Certification).

Authorization to sign official immigration related documents rests exclusively with the International Services Office Director. No University employee may sign form G-28 (Notice of Entry of Appearance as Attorney or Representative) to designate an attorney to assist, advise, or represent the University in the preparation and submission of employer-based petitions or documents including, but not limited to the ETA- 9035 (Application for Alien Employment Certification) and I-140 (Immigrant Petition for Alien Worker).

Failure to comply with these provisions will result in notification to the Department of Homeland Security and/or Department of Labor that the employer-based petition or documents were unauthorized and the Form G-28 designation is null, void and without force or effect. Failure to obtain administrative approval and appropriate signatures will result in the withdrawal of the petition or document. In addition, execution of such documents by an individual employee is a violation of PM-26 and is an action outside his/her authority which may result in discipline, sanctions, and/or individual liability being imposed.

EMPLOYMENT BASED PERMANENT RESIDENCE PETITIONS REQUIRING UNIVERSITY APPROVAL

Outstanding Professor/Researcher (tenure/tenure track or permanent research faculty, exempt from labor cert, requires job offer)

Labor Certification via "Special Handling" (faculty with teaching component)

Labor Certification "Regular Handling" (faculty without teaching component)

PAYMENT OF LEGAL FEES BY THE UNIVERSITY AND OTHER REGULATIONS FOR PROCESSING LABOR CERTIFICATIONS

Regulations effective July 16, 2007:

- Require the employer to pay all fees associated with preparing, filing and obtaining labor certification to include advertisement and legal fees.
- Include a provision addressing suspension from the labor certification program where the Department of Labor finds involvement of fraud or willful misrepresentation.
- Imposes a 180 day deadline for filing I-140 immigrant petitions based on an approved labor certification. The 180 day deadline applies to all labor certifications.
- Provides notice that knowingly and willfully furnishing false statements is a federal offense punishable by fines and/or imprisonment, as well as additional penalties. This in effect means not only institutional liability, but personal liability as well.
- Other requirements not relative to this policy.

The requirement of the University to cover all legal fees ends with the labor certification. The legal/filing fees for subsequent petitions including the I-140, I-485, I-765, I-131, I-539 etc. remain the responsibility of the beneficiary applicant.

It should be noted approval to initiate University sponsorship of a Labor Certification will require the International Services Office to retain University immigration counsel. No outside immigration counsel may be utilized.