

UNIVERSITY OF WISCONSIN-MADISON POLICIES ON SPONSORING FOR PERMANENT RESIDENCE

As a result of a university-wide study, the University of Wisconsin-Madison (UW-Madison) has established a policy that in certain instances it will file petitions on behalf of non-immigrants seeking permanent residence. The office of International Faculty and Staff Services (IFSS) within the Office of Human Resources is the sole authority for filing H-1B temporary worker, O-1 Aliens of Extraordinary Ability, permanent residence, and any other employment-based immigration petitions on behalf of UW-Madison. The role of IFSS is limited to those aspects of document preparation and submission that are directly related to the University's interests and responsibilities as an employer.

The decision to file a permanent residence application must be authorized by the appropriate Dean's office in consultation with IFSS. No promises can be made to current or prospective employees that the University will obtain permanent residence on their behalf. The petitioning process is lengthy, involving up to three government agencies, and the final decision to grant the permanent residence must be made by the U.S. Citizenship and Immigration Service. It is never a certainty that the permanent residence will be approved, and therefore cannot be promised as an enticement.

The following categories of UW-Madison employees qualify for University sponsorship for permanent residence:

- new tenure-track or tenured faculty whose initial offer letter was issued within the past 18 months;
- Clinical and CHS faculty with primary teaching responsibilities whose initial offer letter was issued within the past 18 months;
- research staff who hold or have been offered a research position in the Researcher or Scientist series and who appear to qualify for the “Aliens of Extraordinary Ability” category;
- tenure-track or tenured faculty who were hired more than 18 months ago and appear to meet the “Outstanding Professor” qualifications; or research staff who hold or have been offered a permanent (see NOTE below) research position in the Researcher or Scientist series who do not appear to qualify for the “Aliens of Extraordinary Ability” category but might qualify for the “Outstanding Professor/Researcher” category.

Details regarding the qualifications and procedures for filing for Labor Certification for teaching faculty positions, as well as for the Extraordinary Ability and Outstanding Professor/Researcher categories, are on the IFSS web site: <http://www.ohr.wisc.edu/ifss/PR/index.htm>.

**NOTE: Permanent is defined by the U.S. Citizenship and Immigration Service as “for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.”* In some cases, the USCIS Nebraska Service Center has taken the position that UW-Madison’s annually renewable academic staff positions do not meet this definition, despite a memo to the contrary from USCIS Central Office. In cases where the employee clearly qualifies for the “Extraordinary Ability” category, the university will file that type of petition. If the employee does not appear to qualify for “Extraordinary Ability”, IFSS will discuss with the employing department and the employee whether filing an “Outstanding Professor/Researcher” petition would be advisable.

Under exceptional circumstances, the Office of Human Resources (OHR), in consultation with the appropriate Dean’s office, may make limited exceptions to this policy. The University may pursue permanent residency on behalf of certain individuals who do not appear to meet the requirements for the above listed categories, including certain non-instructional and non-research employees. Exceptional circumstances are considered to exist when the long-term services of such an employee are deemed to be in the best interests of the University and would serve to further the University’s missions of instruction, research and public service. In addition, there must be assurances of a long-term commitment on the part of both the employing department and the employee. Both the Dean and the Director of OHR must approve the request before IFSS can process the application. *The UW-Madison will not seek permanent resident status for classified staff or employees-in-training because of the nature of those positions.* Employee-in-training positions are temporary, not permanent positions; and for classified positions, the university would have to advertise nationally and demonstrate that there are no minimally qualified U.S. applicants.

The employing department should initiate the process with IFSS. The department administrator and the interested faculty or staff member should attend one of the permanent residence workshops conducted by IFSS as the initial step toward determining if the individual qualifies for UW-Madison processing. To initiate the process, the department should complete the Dean's Authorization and Department Request forms and submit them to IFSS. IFSS cannot commence processing the application until both forms, completed and signed, have been received.

NOTE: Wisconsin state law prohibits state agencies and their employees from retaining an attorney without the approval of the Governor. An individual employee may engage counsel at any time to represent his or her own interests, provided such representation does not relate to any legal interests of the University. Faculty members cannot sign form G-28 to designate an attorney to assist, advise or represent the University in the preparation and submission of employer-based petitions or documents. Furthermore, a University representative cannot sign form a ETA-9089 or I-140 which has been prepared by an outside

attorney on behalf of the University. These forms contain facts and evidence being presented by the employer, not the employee, so they cannot be prepared by an outside attorney and signed by a faculty member or other University representative.

Only in those instances where an employee may qualify for either the "Extraordinary Ability" category or the "National Interest Waiver" of the job offer may the employee engage outside counsel to submit the petition, as these petitions are not required to be filed by the employer and do not need the signature of any UW-Madison representative. The main benefit for employees to self-petition as an "Alien of Extraordinary Ability" rather than through the university is that the petition is their own, so they could change employers whenever they want during the process. All related attorney fees would be the responsibility of the employee.

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