LABOR CERTIFICATION INSTRUCTIONS FOR TEACHING POSITIONS

Obtaining permanent residency in the US involves two, and occasionally three, U.S. government agencies. First, the Department of Labor (DOL) examines the application for Labor Certification to ensure that the U.S. work force is protected. Then, the U.S. Citizenship and Immigration Service (USCIS) evaluates the applicant’s qualifications for the specific preference category for which the University is applying. Finally, the foreign scholar must apply for immigrant status, either with the USCIS, or at a U.S. Consulate overseas (for details, see General Information).

Labor Certification is the first step of three steps in obtaining permanent resident status for teaching faculty. The purpose of the Labor Certification process for teaching faculty is to ensure that qualified U.S. workers have been given the opportunity to apply for the position, that the individual hired is more qualified than all of the U.S. workers who applied, and that the wage being offered meets the prevailing wage for the particular occupation. It is essential that the foreign scholar have all of the minimum requirements as stated in the advertisement and on the Labor Certification application prior to being offered the position. Prior experience in the same or a similar position at UW-Madison cannot count toward meeting the minimum requirements. Prior experience with the same employer is only acceptable if the positions are clearly different.

The recruitment standards for university and college teaching faculty are less stringent than those for other types of positions. However, in order to qualify for this “special handling”, the position must involve some actual classroom teaching, there must have been at least one full advertisement in a journal of national circulation, and the Labor Certification must be filed within 18 months of the applicant having been selected. DOL starts counting the 18 months from the date of the initial offer letter, not the beginning date of employment (if changes to the terms and conditions of employment were made after the initial offer, we still must use the date of the first offer). Therefore, it is imperative to file the application within 18 months of the date the position was offered to the candidate; otherwise, a completely new, full-scale, search must be conducted before the University can file for Labor Certification. Filing under the procedures for professional positions may be more advantageous in some cases (see Alternative Filing Procedures at the end).

An application for Labor Certification consists of Form ETA-9089 submitted electronically by International Faculty and Staff Services (IFSS). Extensive documentation of the recruitment process, detailed below, must be gathered and retained for five years from the date of filing the ETA-9089. The date on which the application is filed with the DOL establishes a “priority date” for the foreign scholar, which may be important later in determining how long the final step of the permanent residence process will take.

Processing an application for Labor Certification by the DOL currently takes about six months, even without an audit. Applications may be selected for a random audit, or they may be audited if DOL feels the job requirements are too restrictive, or if there is a combination of occupations required or acceptable for the position or for other unspecified reasons. Obtaining permanent residency status from submission
of the application for Labor Certification to approval of the adjustment of status petition currently takes at least one to two years. Processing times vary considerably and can change dramatically in a short time.

NOTES

Graduates of foreign medical schools who will be involved in direct patient care, in addition to their teaching and research activities, must meet specific credential and license requirements. IFSS can provide detailed information.

Once Labor Certification is approved, the University will file an application for immigrant classification under the second employment based category for “members of the professions holding advanced degrees.” The individual must have a degree beyond a bachelor’s, or a bachelor’s plus at least five years of post-baccalaureate, progressive work experience in the specialized field. If a doctorate is usually required for the profession, the individual must have a doctorate. There are no experience equivalencies for a doctorate.

UW-MADISON PROCEDURES

If the employing department has already recruited extensively for the position, including a full advertisement in a national professional journal (the job title, duties and minimum education, training and experience requirements are spelled out and not linked to the PVL or a website), and the candidate was selected within eighteen months of the expected filing of the Labor Certification application, the University can proceed with the application.

The Department Administrator and the applicant should attend one of the regular workshops on obtaining permanent residence presented by IFSS. At the workshop, detailed information is given on the process, and the necessary forms and instructions are reviewed.

The application is filed electronically through a DOL program called PERM. IFSS has obtained authorization from the DOL to file for Labor Certification on behalf of UW-Madison and has a Personal Identification Number for such filings. IFSS is the only office that can file for Labor Certification for UW-Madison employees.

Overview
The following is an overview of the steps involved in filing for permanent residence based on a Labor Certification. These steps are done after the search has concluded and an offer and acceptance of the position has occurred.

Academic Department:
___ Submits to IFSS the signed Dean’s Authorization and Department Request forms, the Prevailing Wage Determination form, the ETA-9089 worksheet, and the Beneficiary Information
Form, plus copies of all recruitment documentation (see Labor Certification Forms and Documentation below), except for the CV of the rejected candidates.

___ Between 30 and 180 days prior to filing the ETA-9089, the department reposts a copy of PVL with the DOL Notice Requirement in two places in the Department for two months for faculty positions or four weeks for most CHS and Clinical Assistant Professor positions (see Posting Requirements). **Note: This must be done early enough to permit filing the ETA-9089 within the 18 month deadline.** The ETA-9089 cannot be filed less than 30 days after the end of the PVL posting.

**International Faculty & Staff Services:**

___ Submits the prevailing Wage Request form to the US Department of Labor (DOL). Once DOL makes its determination, IFSS reviews Prevailing Wage Determination with Department to ensure compliance.

___ Completes and submits ETA-9089 electronically to DOL when all supporting documentation is received from the academic department.

**Department of Labor**

___ Certifies or denies ETA-9089 and returns, or sends an audit letter.

**Academic Department**

___ Beneficiary signs certified ETA-9089 immediately upon receipt from DOL.

___ Prepares and submits form I-140 to IFSS along with the filing fee check from the employee payable to US Department of Homeland Security for the filing fee and the supporting documentation (see below). Per UW policy, the individual must pay the filing fee, not the department.

**NOTE: The I-140 must be filed within 180 days of the date the ETA-9089 was certified by the Department of Labor. Failure to file within the deadline will result in the automatic cancellation of the Labor Certification.**

**International Faculty and Staff Services**

___ Signs ETA-9089

___ Reviews I-140, prepares application packet and submits to USCIS.

**Foreign Scholar – Adjustment of Status or Consular Processing**

The final step in the permanent residency process is the responsibility of the foreign scholar, who must gather documentation and submit it to USCIS for “Adjustment of Status” to permanent resident, or submit an application for an immigrant visa to a U.S. consulate abroad for “consular processing.” In most cases, foreign scholars at UW-Madison will apply for Adjustment of Status, (file the I-485) since
they are already present in the U.S. Scholars may be able to file their application for adjustment concurrently with the University’s I-140, later with a copy of the I-140 receipt notice, or after the I-140 has been approved. The priority date, which was established when the Labor Certification application was filed with the DOL, determines if the application for Adjustment of Status can be filed immediately, or if there is a waiting period. IFSS can advise the scholar about cut-off dates, or the scholar can check the Visa Bulletin on the State Department web site at: http://travel.state.gov. For complete information on this step of the process, see “Adjustment of Status” under: http://www.ohr.wisc.edu/ifss/PR/index.htm.

RECRUITMENT PROCEDURES

Although university and college teaching faculty benefit from “special handling,” all of the following recruitment procedures must be followed in order to meet the DOL regulatory requirements.

At least one advertisement must be placed in a national professional journal, which states the job title, duties and requirements. Electronic AND print ads must both meet the following two requirements:

- The advertisement must be in a website or publication that is NATIONAL in scope. Websites or publications that only list job opportunities in a specific region probably do not qualify to satisfy the PERM requirements.

- The publication or website must be that of a PROFESSIONAL JOURNAL, meaning that the journal which publishes the ad must regularly offer articles with scholarly or professional content in addition to job listings in at least one of its formats.

Electronic advertisements must also meet the following two requirements, which do not apply to print ads:

- Electronic advertisements must be posted for a MINIMUM OF 30 CALENDAR DAYS.

- The START AND END DATES of the electronic advertisement must be documented. The gold standard of evidence for this requirement would be computer printouts of the advertisement from a web browser showing the URL and the date. Those printouts would ideally be made on both the day the ad was posted and the day the ad was taken down. There may be other types of acceptable evidence if this is infeasible. For print ads, tear sheets are still the preferred method of proof.

Just a reminder that the adjudicators who evaluate our permanent labor certifications at DOL are not specialists in higher education, and certainly not specialists in any particular academic field. The only publication they are all familiar with is the Chronicle of Higher Education. Any other "national professional journal" that is submitted, will be subject to undue and possibly unfair skepticism about its national scope and professional/scholarly content. Therefore, I would encourage searches to continue to
make use of the Chronicle's electronic advertisements, especially because those ads are significantly cheaper than those in the print edition.

The advertisement should include the same information as the Position Vacancy Listing (PVL). The copy must include the name and dates of publication.

2. All applications must be reviewed in accordance with normal faculty search procedures and the most qualified candidate must be selected.

3. Post-recruitment postings must be conducted between 30-180 days prior to filing the ETA-9089 (see below).

NOTE: A copy of ALL the advertisements the department placed must be given to IFSS. If evidence of the ad is not available, then no mention of the advertisement will be included in the Labor Certification. Therefore, IFSS recommends obtaining a hard copy of the print ad or printing off the advertisement from the webpage on which the ad was placed while it is still posted.

## Prevailing Wage Determination

**Requirements:** The Department must pay the international faculty member 100% of the prevailing wage or the actual wage offered, whichever is higher. The prevailing wage is the weighted average salary paid to all persons equally employed in the area of intended employment. The University must use the prevailing wage determinations provided by the US Department of Labor. The Department of Labor can investigate complaints and review the documentation to ensure compliance with the wage requirements.

**Department Procedures:** In order to complete the process for determining the prevailing wage, the Department must:

Type the information on the enclosed Prevailing Wage Request form. The form is also available on the IFSS web site at: [http://www.ohr.wisc.edu/ifss/PR/index.htm](http://www.ohr.wisc.edu/ifss/PR/index.htm). Remember to use the MINIMUM requirements to fill the position, not the individual’s qualifications.

Submit to IFSS.

IFSS will check the job requirements and duties against the Specific Vocational Preparation (SVP) shown in the O*Net Job Zones to be sure that the requirements stated by the Department on the form are those normally required for the occupation and do not exceed the SVP. If the requirements do exceed the SVP, IFSS will contact the Department for clarification. The department would have to document business necessity by showing that “the job duties and requirements bear a reasonable relationship to the occupation in the context of the employer’s business and are essential to perform the job in a reasonable manner.” DOL will reject an application if others have been hired for a similar position with less than the stated requirements or if the beneficiary gained experience in a substantially
similar position with the employer prior to being offered the position for which the Labor Certification is being filed.

**Processing Information:** IFSS will submit the Prevailing Wage Request form to the US Department of Labor for the determination of the prevailing wage. Each prevailing wage determination is made individually by DOL; therefore, until a prevailing wage request form is submitted to DOL, there is no method to predict the prevailing wage level for each title within a department. The department must pay 100% of the prevailing wage or the offered wage, whichever is higher. In the event that the prevailing wage determination is higher than the offered salary, IFSS will contact the department immediately. Any appeal of the prevailing wage determination must be filed within 30 days of receipt of the original determination.

The prevailing wage determination is valid for a period of between 90 days and one year, whatever is assigned by DOL. The ETA-9089 must be filed within the validity period of the Prevailing Wage Determination.

**POST-RECRUITMENT POSTING REQUIREMENTS**

Between 30 and 180 days prior to filing the ETA-9089, the employer must give notice of its intent to file the application and be able to document that such notice was provided by posting such notice:

- at an appropriate location (e.g., the location where other job opportunities are posted or where required wage and hour or OSHA notices are posted) on the employment premises for at least 10 consecutive business days or for the normal recruitment time, whichever is longer; and
- by publishing the notice in any electronic in-house media used for the recruitment of similar positions in the employer's organization

Posting must be conducted in accordance with Department of Labor regulations, even though the position has been filled already by the person for whom we are applying. The print posting should consist of the original Position Vacancy Listing (PVL), with the following statement typed either onto the face of the PVL or on a separate sheet of paper that is attached to the PVL. The text of the statement should read:

“A competitive recruitment and selection process was conducted for this employment opportunity and a U.S. worker was not selected. An application for Alien Employment Certification is being filed on behalf of an alien to fill the employment opportunity. Anyone with documentary evidence relative to the application, or available workers, wages and/or working conditions, may contact the Regional Certifying Office of the Department of Labor at the following address:

U.S. Department of Labor  
Employment and Training Administration  
Foreign Labor Certification National Processing Center  
Harris Tower  
233 Peachtree Street, Suite 410
The PVL and accompanying statement must be posted in two conspicuous locations in the hiring Department for at least ten consecutive working days in a place that is clearly visible and unobstructed.

In addition, the PVL must be **re-posted on the OHR web** during the same time frame, 30-180 days prior to filing the ETA-9089. The Department will need to create a new PVL with the exact same text as the original one under which the beneficiary was hired. In the “Additional Information” section on the PVL, the Department must type in the same text as above, including the address. In the “Comments” section, the Department should advise OHR that this PVL is being posted in connection with an application for Labor Certification and that it is to be posted for the normal period of time for such a position (usually 2 months). It is the Department’s responsibility to monitor the posting time. At the end of the posting period, remove the PVL and statement, and document the results of the posting in accordance with the “Sample Letter for Department to Certify that Position Was Properly Posted.” If no inquiries were received, indicate that in the letter. If any inquiries were received, they should be referred to the DOL. Inquires from individuals who think the position is still vacant should not be referred to the DOL. The individuals should be told the position is filled. This posting is not a part of the recruitment process, but rather notification of the filing of the Labor Certification. The letter must be signed by the person with hiring authority who will sign the ETA-9089 worksheet. Please submit the letter and copies of both postings to IFSS.

**LABOR CERTIFICATION FORMS AND DOCUMENTATION**

1. Form ETA-9089 is filed electronically by IFSS. The form must be signed immediately upon certification by IFSS and the beneficiary.

2. All recruitment documentation, which includes:
   - a signed statement from the Chair outlining in detail the complete recruitment procedures undertaken, including the total number of applicants and the specific, lawful, job-related reasons why each U.S. resident or citizen who applied for the position was not as qualified as the beneficiary, based on the advertised education and experience requirements (incomplete file is not acceptable). This should be in the form of a list as an addendum, identifying each applicant by name, and the reason(s) for rejection.
   - a final report of the body making the recommendation of selection of the beneficiary (the Search Committee) after the completion of the process.
   - a copy of at least one advertisement placed in a national professional journal, giving the name and dates of publication and which states the job title, duties and requirements.
• CV and application materials of all applicants, including the beneficiary. **NOTE: IFSS only needs the application materials from the beneficiary, not all of the other applicants. The department must retain all other applications for five years.** See Document Retention below.

• evidence of all other recruitment sources used such as letters to other universities, postings at conferences, electronic web postings, emails etc. Attach copies of these other recruitment efforts, including the date(s) the postings were sent, conference was held or emails were sent. The exact dates of the advertisements must be given to IFSS. In order to mention additional recruitment efforts on the ETA-9089, a copy of those advertisements must be given to IFSS as well. If the advertisements/recruitment efforts are unavailable, then they will not be included in the ETA-9089 nor should they be included on the search committee report or the Chair’s recruitment summary letter.

• completed paper and electronic postings and statements regarding postings. See Post-Recruitment Posting Requirements below.

3. The initial offer letter (and any subsequent amendments).

4. A written statement attesting to the degree of the beneficiary’s educational or professional qualifications and academic achievements. This should consist of a letter from the Chair describing the beneficiary’s education and experience, supported by the CV and a copy of all pertinent degree(s), certificates or licenses (if applicable), with translations of all documents that are not in English, including those that are in Latin (see Translations Guidelines below). If the diploma does not indicate the field in which the degree was granted, or if the field is not obviously relevant to the position the scholar will be filling, a set of transcripts should also be included, with a translation as necessary. If the beneficiary obtained his education outside the United States or Canada, it is recommended that a credential evaluation be done. More information about such an evaluation can be found at [www.naces.org](http://www.naces.org).

**DOCUMENT RETENTION**

All documentation must be retained for at least five years from the date of filing the ETA-9089. IFSS strongly suggests that it be retained in one place, to facilitate a response in case of an audit. We are only given thirty (30) days to respond to an audit request, so a speedy response is essential. The document retention file must include:

1. a copy of the signed and certified ETA-9089
2. a copy of the Prevailing Wage Determination
3. documentation of the paper and electronic PVL postings
4. documentation that the beneficiary met the minimum job requirements when hired
5. all recruitment documentation (see above)
6. a copy of the initial offer letter and any subsequent revisions.
IFSS retains a copy of all documentation except the application materials from all of the rejected candidates. These must be retained by the Department for the required five years.

**I-140 SUPPORTING DOCUMENTATION**

Once the Labor Certification has been certified, the University must file form I-140 with USCIS within 180 days of the date it was certified. IFSS will attach the original certified Labor Certification to the I-140 along with:

1. a copy of the initial offer letter, and any subsequent revisions
2. a copy of the beneficiary’s CV
3. a copy of the diploma(s), and a transcript if the field of study is not on the diploma
4. a copy of the credential evaluation if necessary
5. a copy of the first page of the beneficiary’s publications
6. a copy of all recommendation letters received during the search process
7. evidence of the University’s existence and ability to pay the prevailing wage or offered wage; and
8. Filing fee check payable to the US Department of Homeland Security from the employee.

**NOTE:** The I-140 must be filed within 180 days of the date the ETA-9089 was certified by the Department of Labor. Failure to file within the deadline will result in the automatic cancellation of the Labor Certification.

**TRANSLATIONS GUIDELINES**

Translations do not need to be done by a professional translating service, nor do they need to be notarized. They should be accompanied by a statement from the translator indicating his/her qualifications for doing the translation. The foreign scholar should NOT do the translation, nor should an immediate family member. The translator must sign and date the translation. The following statement must be on the translation: “I certify that I am fluent (conversant) in English and _________ and that the above/attached document is an accurate translation of the document attached entitled ______________________________.”
ALTERNATIVE FILING PROCEDURES

Colleges and universities have the option of filing either under the special handling procedures for college and university teachers, or under the regular procedures for professional positions. In almost all instances, it is better to file under the special handling procedures. Filing under the professional procedures would require a new advertisement and recruitment process. However, if the Department missed the 18 month deadline for faculty special handling, the professional procedures might be beneficial. If this occurs, the Department should contact IFSS to discuss the process and develop a plan.

The following is a brief summary of the process:

- for professional positions, the employer must conduct the recruitment within 6 months of filing the application.
- a job order and two print advertisements are mandatory parts of the recruitment and they must be conducted at least 30 days, but not more than 180 days, before filing the application.
  - the job order is placed with State of Wisconsin, Department of Workforce Development for a period of 30 days
    - [https://jobcenterofwisconsin.com/](https://jobcenterofwisconsin.com/)
  - the advertisements must be placed in a newspaper of general circulation on two different Sundays, or the employer may, in lieu of one of the Sunday advertisements, place an advertisement in a professional journal
  - the advertisements must:
    - include the employer's name
    - direct applicants to the employer
    - provide a specific description of the vacancy
    - indicate the geographic area of employment and describe any travel requirements
    - contain a wage rate at least equal to the prevailing wage rate
    - not contain job duties or requirements which exceed those listed in the ETA-9089
    - not contain wages or terms and conditions of employment that are less favorable than those offered the alien
- the employer also must select three additional recruitment steps from the following alternatives (note that only one of the additional steps may take place within 30 days of filing and none of the steps may have taken place more than 180 days prior to filing):
  - job fairs
  - employer's web site
  - job search web site other than the employer's web site
  - on-campus recruiting
  - trade or professional organizations
  - private employment firms (headhunters)
  - employee referral program with incentives
  - campus placement offices
o local and ethnic newspapers
  o radio and television advertisements

• the employer must prepare a recruitment report signed by the employer's representative
describing:
  o the recruitment steps taken and the results achieved
  o the number of hires
  o the number of U.S. workers rejected, categorized by the lawful job-related reasons
    for such rejections

• a U.S. worker is able and qualified for the job if the worker can acquire the necessary
  skills during a reasonable period of on-the-job training