Information

Employment of Resident Aliens (Immigrants)

Effective

May 1, 1992

Number

PER-2.16

Applicability

This policy applies to University Administrators, Faculty, and Staff.

Administrative Authority

Vice President for Human Resources

Responsible Unit

Human Resources

Miller Information Technology Center Rm 02C

2315 South First Street Walk

Louisville, KY 40292

Phone: 502-852-6258
Email: askhr@louisville.edu

History

Revision Date(s): December 14, 2021 (minor edits); April 22, 2022 (minor edits); August 24, 2022 (minor edit); April 1, 2026 (minor revision)
Reviewed Date(s): March 8, 2016

Categories

Statement:

For university purposes, immigrants and refugees are treated as U.S. citizens for employment practices. They may be eligible for federal financial aid, employed without restrictions of the immigration laws, and become residents for tuition purposes in public institutions. Immigrants may engage in employment through the university without special permission from the Immigration and Naturalization Service.

Related Information:

Foreign scholars coming to the United States to accept a permanent faculty position at the university should apply for an immigrant visa. Eligibility for permanent status or immigrant status is limited to the following types of persons for university purposes:

A. Aliens having family members who are U.S. citizens or permanent residents;
B. Refugees and applicants for asylum; and
C. Aliens having special occupational skills who are "members of the profession," or possess "exceptional ability in the sciences or the arts" (third preference) or who are "capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable persons exist in the U.S." (sixth preference). Foreign scholars who are offered permanent or long-term positions in the university may qualify under this category as either third-preference or sixth-preference immigrants.

The university may offer permanent employment or a tenure-track faculty position to an immigrant alien, but a labor certification must be obtained in advance from the

federal government to show no Americans are being displaced.

A special procedure exists for faculty hiring via the recruitment plan and search committee if the immigrant alien is the top choice willing to accept the position at the advertised salary.

There is no exception for non-faculty positions, which means the university must show there are no Americans who meet the minimum qualifications for those positions if offered at the "prevailing" wage. Prevailing wage means the market rate for these kinds of skills and is usually higher than university salary. A labor certification for permanent hiring of an alien in anything other than a tenure-track position should be requested in only a most exceptional situation.

PER-2.01, Recruitment and Selection - Staff

Definitions:

Resident aliens (immigrants) are persons who are admitted to the United States for the purpose of residing here permanently. They are identified by their possession of the Alien Registration Receipt Card, or Immigration/Naturalization Form I-551, commonly known as a "green card."

Procedures:

If the university intends to employ an immigrant alien, the employer must make an effort to qualify the alien as either a third- or sixth-preference immigrant. There are three major steps in obtaining preference classification for an immigrant alien.

1. Labor Certification Qualification
   The first requirement for an alien to qualify for a third- or sixth-preference classification is a labor certification. A labor certification is a determination and statement by the U.S. Department of Labor that there are no qualified U.S. workers (or equally qualified workers in the case of teaching faculty members) available for the employment and that the employment of an alien in a particular position will not adversely affect the wages and working conditions of other U.S. workers in that field. Information pertaining to required procedures must be obtained through the Department of Labor.

The Department of Labor requires elaborate procedures for labor certification. Applications by academic institutions will usually fall into one of the categories of (1) teaching faculty members, (2) aliens of exceptional ability, or (3) others.

1. Teaching Faculty Members
   To obtain a certification, the university must demonstrate that the alien was selected as a result of a competitive recruitment and selection process and that the alien was found to be better qualified than any U.S. applicant.
2. Aliens of Exceptional Ability
   The Department Of Labor has determined there is a shortage of qualified persons available in certain occupations. In order to qualify, an alien must demonstrate that he or she is accorded "widespread acclaim and international recognition."
3. Other Employees
   If the university wishes to apply for a Labor Certification for an employee other than as in 1 and 2 above, the institution must demonstrate that the alien is being offered wages and working conditions above normal for the position and that there are no U.S. workers available who are even minimally qualified for the position. The alien must be the only qualified person available for the position.

2. Third- and Sixth-Preference Qualifications
   The second step requires application to the Immigration and Naturalization Service for classification as a third-preference or a sixth-preference immigrant. Foreign scholars could qualify for either classification, but, since sixth-preference classification is currently "oversubscribed," third-preference is the alternative usually selected. The alien or an agent acting in the alien's behalf, usually the employer, can apply for third-preference classification. An employer must apply for sixth-preference classification on behalf of an alien. INS Form I-140, obtained through the local Immigration and Naturalization Service office, must be completed to petition preference qualification for an immigrant alien.
3. Immigration Visa or Adjusting Status Application
   The third step in obtaining immigrant status is for an alien to receive an immigrant visa and enter the U.S. as a permanent resident or if the alien is currently residing in the U.S., to present an application for adjustment of status to that of a permanent resident. The alien outside the U.S. environs may obtain an application through the U.S. consular office. The alien's family may apply for immigrant status in the same classification as the principal alien. If the alien is

eligible, both the alien and his or her family, will be granted immigrant visas and may proceed to the U.S. as immigrants.

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The procedure for completing the employment process for faculty and staff recruitment and selection is contained in Personnel Policies and Procedures Manual under PER-2.01, Recruitment and Selection - Staff.

Forms/Online Processes:

INS Form I-140