

Basic Labor Certification Applications for Researchers and Other Non-Teaching Positions

The university can obtain permanent residency under employment based criteria for a researchers and other non-teaching positions under the basic labor certification process.

This process allows the Department of Labor (DOL) to determine and certify that there are not sufficient workers who are able, willing, or equally qualified to do the work needed, and that the employment of international workers will not adversely affect the wages and working conditions of the of the workers in the U.S. who are similarly employed. An employer must prove that it has made good faith efforts without success to recruit US workers through specific recruitment sources.

The basic Labor Certification will involve 3 steps:

1. Labor Certification filed with DOL;
2. After the Labor Certification is approved, the university will file for a non-immigrant visa for the international hire via USCIS Form I-140;
3. The international hire will file for permanent residence via I-485 after the I-140 is approved. It is possible to file the I-485 concurrently with the I-140. ISSS will discuss the pros and cons of concurrent filing at the initial interview regarding permanent residency.

An approved I-140 does not provide employment authorization or permission to remain in the US permanently. Nonimmigrant status must be maintained during this time and the applicant must have valid work authorization to be employed.

In order to apply for the labor certification for a non-teaching position, the university must make a good faith effort to fill the position in question with a qualified US worker. We must advertise and recruit for the position using specific requirements set by DOL. We must offer prevailing wages and working conditions and demonstrate that there are **NO minimally qualified US workers available** for the position. In addition, the university must keep the job opportunity open to qualified US workers throughout the application process until the labor certification is approved. **Because of this, the advertisement for a non-teaching position needs special attention. Consult with ISSS before advertising.**

Departments should follow these procedures in order to comply with DOL requirements:

- Draft an advertisement for the position and have it reviewed by ISSS and the Office of Equal Opportunity and Diversity for compliance. The advertisement must have the following elements:
 - Name of Employer;
 - Direct applicants to send resumes to the employer;
 - A description of the vacancy specific enough to apprise US workers of the job opportunity for which certification is sought;
 - Indicate the geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job duties;
 - Although a wage rate need not be included in the ad, if one is included it must not contain a rate lower than the prevailing wage rate;
 - The ad must not contain any job requirements or duties which exceed the job requirements reported on Form ETA 9089; and
 - The ad must not contain wages or terms and conditions of employment that are less favorable than those offered to the alien.
 - The minimum requirements should not be described with “unduly restrictive” job requirements. We must be prepared to justify any requirements if asked to do so. Any “preference” stated in the advertisement or job description will be treated as a requirement by DOL.

The employer must retain copies of the newspaper and journal pages in which the advertisement appeared in order to document compliance in case of an audit.

- The DOL has specific recruitment steps that must be followed, including the placement of a Job Order with the Colorado State Workforce Agency (SWA) and posting of the advertisement in 2 Sunday newspapers of general circulation. In addition the department must undergo three additional recruitment steps. ISSS will provide detailed information to the departments.
- After the recruitment period (which must remain open during the labor certification process and cannot be more than 180 days prior to filing the labor certification), If no minimally qualified US workers have applied for or are available for the position, the department may prepare the following documents for submission to ISSS in order to compile the labor certification application:
 - Copies of all recruitment efforts undertaken (tear sheets from newspapers, copies of website where the ad appeared in, etc.)
 - Copies of all applicant' resumes
 - A copy of the final candidate's highest diploma, curriculum vita, list of publications and letters of recommendations. Any documents in a language other than English (including Latin) must be accompanied by an English translation certified by the translator. A signed statement as follow will suffice: "I am familiar with English and (other language) and I certify that this is a true and complete translation of (type of document)." Copies of the documents are acceptable.
 - A recruitment report signed by the department chair or responsible faculty member (with hiring authority) describing all of the recruitment efforts, the recruitment sources used and the results of the advertising and recruitment efforts. The report must specifically state the number of US workers who responded to the recruitment efforts, the number interviewed and the "lawful job-related reasons for not hiring each US worker interviewed."
 - A letter from the Department Head, stating that the position is "permanent".
 - A copy of the contract between the university and the scholar, if one exists.
 - Evidence that the notice of filing the "Application for Permanent Alien Employment Certification" was posted. (ISSS will provide this notice to the department and it must be posted in a conspicuous location for at least 10 days.)
- Once all materials are received and are complete, ISSS can submit the application for the labor certification via the web.

Again, we caution scholars and departments that the scholar must have been awarded his or her degree (if it is a requirement for the position) before the University can file the I-140. The University often hires individuals who have completed all the requirements for their Ph.D. degree except for submission of their dissertation. The completion of the dissertation is sometimes not within the scholar's priorities during his or her first year of teaching or research. Time passes and the degree isn't awarded as promptly as everyone might have wished. While the department may allow some leeway in this regard, the US Citizenship and Immigration Services will not. The time limit for filing for a non-teaching position is 6 months from the date of offer.