

Employment Based Immigration

DEPARTMENTAL CHECKLIST

1. Complete and return the "Permanent Residency" Request Form to the International Employment Office.
2. Schedule a consultation visit with Jill Guzman in the International Employment Office. The visit should include the employee and the Department representative or sponsor. Always bring a current Curriculum Vitae of the sponsored employee.
3. Prepare a check from the Department for \$475.00 made out to the Department of Homeland Security for the I-140 visa.
4. Please gather together any recommendation letters that are in the sponsored employees file as well as all the recruitment information such as the interim and final selection reports and copies of the advertisements used for the position. Send all of this information to International Employment via campus mail once we have decided that it is appropriate to pursue an immigrant visa.

BACKGROUND AND STEPS OF THE PROCESS

Employment based immigration is one of the most popular ways to obtain Permanent Residency. NC State will process Permanent Residency for an individual if, and only if, the request to do so comes from the sponsoring Department. The chairman of the appropriate department must approve all academic Permanent Residency requests.

The Permanent Residency process is a two-application process. One application must come from the sponsoring employer and is called the I-140 petition. The other application is filed by the employee and is called the I-485 petition to change his or her status to that of a permanent resident. If the employee is out of the country, the employee would file a similar application with the Department of State, but only after the I-140 is approved. An advantage to an employee within the United States is that the employee may file the I-485 adjustment petition with the I-140 application filed by the University.

The International Employment office will consult with the sponsoring department and the sponsored employee to determine the most appropriate type of I-140 petition. Each type of I-140 petition requires different types of evidence of the employer and the employee. Some employees may qualify for more than one type of I-140 visa.

At NC State, we will sponsor I-140 Employment based Permanent Residency in five ("5") different categories. The categories are listed by how often they are used. The Optional Special Handling and the Outstanding Ability are used most often and generally a professor may qualify for both.

1. Optional Special Handling – the most common way to sponsor teaching faculty who were selected less than 18-months ago pursuant to a competitive selection process. Labor Certification is required.
2. Outstanding Ability – Outstanding researchers and professors who are internationally recognized, have had a minimum of three years of experience and have been offered a tenured or tenure track position or a long term research position comparable to tenure track at a university or research institution. A job offer is required. No labor certification is required. NC State must file the petition as the employer.

3. Extraordinary Ability – Persons of extraordinary ability in the sciences, arts, education, business, or athletics, which has been demonstrated by, sustained national or international acclaim and who will prospectively be of substantial benefit to the United States. No job offer is required. No labor certification is required. The alien may file the petition alone without NC State help, but usually NC State files the petition for faculty.
4. Schedule A Exceptional Ability – Aliens of widespread acclaim and international recognition.
5. National Interest Waiver – Aliens exceptional ability in the sciences, arts, or business and whose presence and activities in the U.S. are in the national interest. No job offer is required. Labor certification requirement is waived. The alien may file the petition alone, but usually NC State files the petition.

1. OPTIONAL SPECIAL HANDLING

- A. This is one of the most common and simplest routes to an I-140 approval, but not always the fastest.
- B. This is the only category where a Labor Certification issued by the Department of Labor is required. The Labor Certification must be obtained first before an I-140 can be filed.
- C. Limited to Teaching Faculty Positions (can be a combined teaching/research position)
- D. Application must be made within 18-months of Selection Date
- E. A competitive selection process must have been utilized including a national print advertisement for the position
- F. Alien must have been the most qualified of all the applicants
- G. Process to File a Labor Certification
 - i. Please provide International Employment with:
 1. Brief letter detailing the alien's degree and qualifications
 2. Department letter detailing the recruitment efforts including description of advertisement, number of applicants, list of applicants interviewed with reason as to why the applicants were chosen to be interviewed, specific reasons for each applicant interviewed but rejected as to why the alien is more qualified, and a brief statement as to the superior qualities of the alien.
 3. Selection Committee letter again detailing the recruitment efforts including the same information as the department letter.
 4. Offer Letter
 - ii. As the Department is gathering the recruitment materials, our office will prepare a posting notice detailing the job requirements that will be placed for 10 days outside the Department and outside Human Resources. The posting is taken down after 10 days and thereafter we must wait 30 days before filing the Labor Certification. **The posting notice does not open the job back up for recruitment.**
 - iii. Once our office has the recruitment material and the posting notices back from the department we will prepare the Labor Certification.

- iv. The Labor Certification is filed electronically and we usually have a response within a month.
- H. Process to File the I-140 (once the Labor Certification is approved) we can proceed with the I-140 application.
 - i. Send us a check for \$195.00 from the Department made out to the Department of Homeland Security.
 - ii. Our office will meet with the sponsored employee to prepare the I-140 which includes family information and the employee's last foreign address.
 - iii. We will also assist the sponsored employee prepare the I-485 adjustment of status packet if the employee wants to apply for that at the same time.

2. OUTSTANDING PROFESSORS AND RESEARCHERS

- A. The Outstanding Professor/Researcher category is reserved for those considered Outstanding in their specific field and who have obtained International Recognition.
- B. Only tenured/tenure track professors or permanent researchers may use this category and all must have three years of experience.
- C. If the faculty member was selected for the position more than 18 months ago or if their position is purely research, then this may be the best option.
- D. The process does not require a Labor Certification like the Optional Special Handling. The University can apply directly for the I-140 without worrying about the recruitment that took place for the employee's position.
- E. The Department must supply a letter from the Department Head that sets forth:
 - 1. The position is tenured/tenure track or permanent research
 - 2. The qualifications of the author of the letter
 - 3. The experience of the sponsored employee
 - 4. The qualifications of the sponsored employee (i.e. what is the research and what impact has the research already had and will have to the research field)
 - 5. Please refer to the Outstanding Department Letter Template for more guidance. We will send this to Department when we meet together
- F. The Employee must provide evidence of Outstanding Ability. Such evidence shall consist of at least two of the following:
 - 1. Documentation of the alien's receipt of major international prizes or awards for outstanding achievement in the academic field (such as major grants);
 - 2. Documentation of the alien's membership in associations in the academic field, which require outstanding achievements of their members;
 - 3. Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

4. Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same, or an allied, academic field (such as requests to act as the judge or reviewer for articles to be published);
5. Evidence of the alien's original scientific or scholarly research contributions to the academic field; (this includes letters of recommendation [see below for guidance] or patent work)
6. Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field. (Title pages only, not full text, may be submitted.)
7. Other comparable evidence. (We have used invitations to major international conferences to present research)

Guidance for Letters of Reference

Four to five letters from senior people in the field attesting to the alien's significant contributions to and international reputation in the field. We recommend a variety of letters from people outside NC State and outside the U.S. and from senior people in US government and industry. Basic contents of the letter should include:

1. the position of the writer of the letter in the field (include a copy of the writer's CV);
2. how the writer knows of the alien's work;
3. how the alien's work has made significant or outstanding contributions to the field;
4. references to the alien's outstanding reputation such as evidenced by presentations at national or international conferences, publications in national or international juried journals, memberships in selective associations or societies; receipts of prizes or awards;
5. references or descriptions as to how the alien may benefit the U.S. in the future;
6. a statement which refers to the alien as an "outstanding professor in the field of _____" or as an "outstanding researcher in the field of _____."

ALIENS OF EXTRAORDINARY ABILITY

THE ALIEN MUST PROVIDE:

- A. The Extraordinary Ability category is reserved for those at the top of their field who have a record of sustained national or international acclaim.
- B. The visa is very similar to Outstanding, but does not require position to be tenured/tenure track. It still should be a permanent position.
- C. The Extraordinary Ability visa also includes visas for managers in high level positions. In the university setting this includes department heads and directors who may not be teaching or conducting research.
- D. An employee does not need a sponsor per se, but we have found it best to be sponsored by the University and to include a Department Support letter similar to that provided for the Outstanding category described above.

- E. To prove Extraordinary Ability the employee must provide evidence of a one-time achievement (that is, a major, internationally recognized award), OR at least three of the following:
1. Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 2. Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
 3. Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
 4. Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought; (such as requests by editors of journals to review articles for publication)
 5. Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field or evidence of the alien's authorship of scholarly articles of major significance in the field; (Title pages only, not full text of publications, may be submitted.) (see guide for letters of reference below)
 6. Evidence of the alien's authorship of scholarly articles in the field, in professional or other major trade publications or other major media; (Title pages only, not full text of publications, may be submitted.)
 7. Evidence of the display of the alien's work in the field at artistic exhibitions or showcases (preferably in more than one country);
 8. Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
 9. Evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field;
 10. Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.
 11. If the above standards do not readily apply, you may submit comparable evidence to establish the beneficiary's eligibility.

Guidance for Letters of Reference

Four to five letters from senior people in the field attesting to the alien's significant contributions to and international reputation in the field. We recommend a variety of letters from people outside NC State and outside the U.S. and from senior people in US government and industry. Basic contents of the letter should include:

1. the position of the writer of the letter in the field (include a copy of the writer's CV);
2. how the writer knows of the alien's work;
3. how the alien's work has made significant or outstanding contributions to the field;
4. references to the alien's extraordinary reputation such as evidenced by presentations at national or international conferences, publications in

- national or international juried journals, memberships in selective associations or societies; receipts of prizes or awards;
5. references or descriptions as to how the alien may benefit the U.S. in the future;
 6. a statement which refers to the alien as an "extraordinary professor in the field of _____" or as an "extraordinary researcher or director in the field of _____."

4. SCHEDULE "A" EXCEPTIONAL ABILITY

THE ALIEN EMPLOYEE MUST PROVIDE

A. Evidence that during the past year, the alien has been practicing in the field and that the research has been exceptional.

B. Evidence that the alien enjoys widespread acclaim and international recognition. Documentation must include two from the same list of criteria for Outstanding Researcher. Also, include the same four to five letters suggested for the Outstanding Researcher. (Please refer to the template for reference letters for more guidance.)

THE NC STATE FACULTY ADVISER OR ADMINISTRATOR MUST PROVIDE:

An offer of employment in the form of a letter offering the alien the position. The position should describe the alien's position and why the nature of the position requires exceptional ability. This is a good place to describe why you brought the alien to NC State (i.e. the alien's reputation and exceptional work). You should also describe the impact the alien's research has had on your department and on the particular academic field, and the likely future impact. (Please see the template for the departmental letter for more guidance.)

5. "NATIONAL INTEREST" WAIVER OF LABOR CERTIFICATION

IMPORTANT NOTE: A precedent decision court case in 1998 set the standard for NIW very high. A NIW candidate must essentially prove the alien has extraordinary, outstanding, or exceptional ability, and must show the national impact of the alien's work. If you are thinking of using this category, please call the International Employment Office.

THE ALIEN EMPLOYEE MUST PROVIDE:

A. Evidence that the alien has an advanced degree OR evidence of exceptional ability in the sciences, arts, or business consisting of at least three of the following:

1. An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.
2. Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.
3. A license to practice the profession or certification for a particular profession or occupation.

4. Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.
5. Evidence of membership in professional associations that have elective or selective membership.
6. Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organization. See the criteria under extraordinary or outstanding above for kinds of documents to show this recognition.

If the above standards do not readily apply, you may submit comparable evidence to establish the beneficiary's eligibility.

B. Evidence that the alien's work is in the national interest consisting of three to five letters from senior people in the field attesting to the alien's significant contributions to and international reputation in the field. We recommend a variety of letters from people outside NC State and outside the U.S. and from senior people in US government and/or industry. Basic contents of the letter should include:

1. The position and standing of the writer of the letter in the field (include a CV of the writer);
2. How the writer knows of the alien's work;
3. How the alien's work has made significant or outstanding contributions to the field;
4. References to the alien's international reputation such as presentations at international conferences, publications in international journals, memberships in selective international associations or societies; receipts of international prizes or awards;
5. References or descriptions as to how the alien may benefit the U.S. in the future;
6. A statement which confirms that "Dr./Prof. X's work is in that national interest, will contribute significantly to the body of knowledge in the field of _____, and will potentially benefit U.S. business and the national economy."

C. Diplomas, certificates, licenses, etc. to prove qualifications.

THE NC STATE FACULTY ADVISER OR ADMINISTRATOR MUST PROVIDE:

A. An appointment letter stating the title, salary, and term of appointment.

B. A summary letter discussing the work and its current and future applications, both academically and in the private sector. Describe the work, how it affects the field of study, it's potential for broader applications, how the alien is essential or intimately connected to the work, the effects of this work on the U.S. and its people. Write the support letter in layman's terms as if you were writing for Time or Newsweek. Immigration officers with bachelor's or higher degrees will usually read these letters. They cannot know your field, but they do spend most working days evaluating and synthesizing information and drawing conclusions. Convince them that the alien is doing exceptional work and that somewhere down the line this work will help someone they know. Explain how this research is useful: the effects of light on metals in lakes and oceans may help us convert toxic substances to nontoxic or create photographic film of astounding quality; a gene that affects an essential biological function can help diagnose a disease in utero and treat the fetus or the neonate; knowing the factors that make people choose certain kinds of transportation can make tax dollars earmarked for public transportation go farther. Provide documentation on how much the problem you are trying to solve costs each year in dollars, resources, or human suffering. Explain how the alien employee is essential to the success of the research?

