International Faculty Orientation

August 23rd, 2013
Contact Information

International Support Services
526 Prices Fork Road
iss.vt.edu

Ian Leuschner, Director
Permanent Residency
540-231-3736
ileuschner@vt.edu

David Muusz, Associate Director
H-1B, TN, E-3
540-231-6459
muusz@vt.edu

Mollie LoJacono, Coordinator
J-1 Scholars
540-231-1425
mollie@vt.edu

In-person advising:
Tuesday/Thursday: 10:00 am – 11:30 am
Wednesday: 1:30 pm – 3:30 pm
and by Appointment
Agenda

- Status Survey
- Visa versus Status
- Maintaining Status
- Employment
- Driver’s License
- Travel
- Dependents
- Extensions
- 2-year bar for J-scholars
- E-3 & TN Overview
- Employment Based Permanent Residence
Visa

A document placed in the passport which gives the holder permission to apply for entry at a U.S. border

- Can only be issued abroad
- Only needed for entry into U.S.
- Does not need to be valid to remain in U.S.
Status

A person’s legal presence in the U.S. and permission to remain in the U.S. for a specific period of time

- I-94 record indicates status
- Classification
- Period of authorized stay
- I-94 number
- Date of entry
- D/S vs. future date
- **NEW**: electronic I-94 record
Maintaining Status

- Maintain all immigration documents
- Notify ISS of any changes in your job
- Report change of address within 10 days
- No unauthorized employment
- Depart the U.S. by date on I-94
Maintaining Status

J-1 Scholars

- Documents:
  - Passport, DS-2019, I-94
  - Leave by end of 30 day grace period
- Work only at site of activity listed on the DS-2019
- Must get permission letter from ISS to perform outside lectures, etc. May be paid for outside lectures, etc.
- Maintain required health insurance

H-1B employees

- Documents:
  - Passport, I-797, I-94
  - Leave by date on most recent I-94
  - Work only at location listed on the I-129 petition
  - May perform outside lectures but may not receive payment for such services. Reimbursement for travel and living expenses only
  - External work, such as consulting, requires the filing of another petition by the other employer
Employment

- Requirements for Employment
- Taxes
- Social Security
- Additional/Outside Employment
- Change of Employer
Requirements for Employment

All employees must be able to submit required documentation in order to be able to work:

J-1 Scholars
- Copy of passport
- I-94
- DS-2019 with VT funding

H-1B Employees
- Copy of passport
- I-94
- I-797 approval notice (or receipt notice if porting) – if applicable
Taxes

Any money paid to or on behalf of foreign nationals in J or H-1B status may be subject to U.S. taxes and/or tax withholding. For more information, contact Virginia Tech’s tax specialist:

Janet Kunz
540-231-3754
jakunz@vt.edu
J-1 scholars and H-1B employees must have applied for a social security number in order to be paid. The following documentation is required to apply:

**J-1 Scholars**
- Proof of Identity (passport)
- Proof of Immigration Status (valid DS-2019 and unexpired I-94)
- Proof of Work Eligibility (valid DS-2019, unexpired I-94)

*Sponsor letter NOT required

**H-1B employees**
- Proof of Identity (passport)
- Proof of Immigration Status (valid I-797 approval notice and unexpired I-94)
- Proof of Work Eligibility (valid I-797 approval notice, I-94 and VT appointment letter)

Social Security

J-1 scholars and H-1B employees must have applied for a social security number in order to be paid. The following documentation is required to apply:
Additional/Outside Employment

J-1 Scholars
- May give outside lectures or speeches at other institutions and receive payment as long as:
  - Scholar obtains letter of permission from ISS first
  - Outside lecture/speeches are incidental and do not delay the J-1 program
- No additional, concurrent employment allowed

H-1B employees
- May give outside lectures or speeches at other institutions but may NOT receive payment (except reimbursement for travel and living expenses)
- Additional employment: other institution must file concurrent I-129 petition
Change of Employer

J-1 Scholars – transfer

- No gap between VT end date and new institution’s start date
- Must consult with new employer on this; VT ISS cannot advise on this

H-1B Employees - port
Driver’s License

We recommend that J-1 scholars and H-1B employees obtain a VA driver’s license. The following documentation is required to obtain a license:

**J-1 Scholars**
- Proof of Identity (Passport)
- Proof of Legal Presence (Valid DS-2019 and unexpired I-94)
- Proof of Social Security Number (if you have one)
- Proof of Virginia Residency (apartment contract)

**H-1B employees**
- Proof of Identity (Passport)
- Proof of Legal Presence (Valid I-797 and unexpired I-94)
  - Receipt Notice vs. Approval Notice
- Proof of Social Security Number
- Proof of Virginia Residency (apartment contract)

*For J-1 scholars: the DMV uses the DS-2019 end date for the license expiration date. ISS can provide a letter explaining the 30 day grace period and asking it to be included in the validity period of the license.*

*For H-1B employees: although USCIS grants an additional 240 days of work authorization during a pending extension or port to another employer, the DMV often requires an H-1B approval notice to renew a driver’s license. Please consider this in the timing of your H-1B extension request or change to other employer.*
Travel

J-1 Scholars
• Travel documents:
  • Valid Passport
  • DS-2019 with travel signature
  • Unexpired J visa (except for automatic visa re-validation eligible trips)

Reminder: Any time you travel, please send copies of your new I-94 and visa (if applicable) to ISS upon your return.

H-1B employees
• Travel Documents:
  • Valid Passport
  • I-797 Approval Notice
  • Copy of I-129 Petition filed by ISS
  • Unexpired H-1B visa (except for automatic visa re-validation eligible trips)
  • Travel letter from Department
  • 3 most recent paystubs
Dependents

J-2 Dependents
- Are issued a J-2 DS-2019
- May apply for work authorization (EAD) once in U.S.
- May apply for a social security number with EAD
- May study
- May apply for a driver’s license

H4 Dependents
- Are issued an H4 I-797 (or receive H4 visa using H-1B’s I-797)
- May not work
- May study
- May apply for a driver’s license

Virginia Tech
Invent the Future
Extensions

**J-1 Scholars**
- Approval from supervisor
- Proof of continuing funding
- Not applied for J-1 waiver
- Research Scholars and Professors: up to 5 years
- Short-term Scholars: up to 6 months

**H-1B employees**
- H-1B extension request (initiated by host department)
- Must be filed with USCIS before current H-1B status expires
- Department processing time
- ISS processing time
- USCIS processing time
- 240 day rule

Reminder: Payroll will email you, your department and ISS 6 months before your work authorization expires. Please start the extension process as early as possible to ensure continued work authorization.
## 2 year bars for J-1 exchange visitors

<table>
<thead>
<tr>
<th></th>
<th>2-year home residency 212(e)</th>
<th>2-year repeat bar</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short-Term Scholar:</td>
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<tr>
<td>Research Scholar:</td>
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<td>Yes</td>
</tr>
<tr>
<td>Professor:</td>
<td>Possible</td>
<td>Yes</td>
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<td>Waiver Possible:</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Indicated on DS-2019 or Visa:</td>
<td>Yes</td>
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<tr>
<td>Impact on <strong>H-1B Eligibility</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Impact on J-1 Eligibility</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Change of Address

J-1 Scholars

Within 10 days of moving to a new address, email Mollie with your new address. Mollie will update your SEVIS record with your new address.

H-1B employees

Within 10 days of moving to a new address, complete Form AR-11 and submit online or by mail to U.S. Citizenship and Immigration Services.


Questions?
I-94

www.cbp.gov/i94
I-797: Approval Notice

I-797A approval notice with I-94 card

I-797B approval notice with consulate
DS-2019

- SEVIS Number
- Site of Activity
- Program Dates
- J-1 Category
- Funding
- 212(e) preliminary endorsement
TN & E-3 Overview

**TN**
- Canadian and Mexican citizens only
- 3 year increments
- Limited list of occupations
- TD for dependents
  - TD dependents may not work
  - TD dependents may study

**E-3**
- Australian citizens only
- 2 year increments
- Same standard for employment as H-1B
- E-3D for dependents
  - E-3D spouses can apply for EAD
  - E-3D dependents may study

NOTE: All extension paperwork must come through ISS
Permanent Residence
Employment-Based Permanent Residence Process

• Two to three step process depending on whether Labor Certification is Required.

• Processing can range from one to five plus years depending on category and the applicant’s country of birth.
Visa for Faculty, Visiting Researchers & Scholars (www.oired.vt.edu/iss/permanent-residency/)

Permanent Residency Policy
Virginia Tech also supports a permanent residency program. Please click on the attached links to learn more about the permanent residency program.

- Permanent residency policy
- Reimbursement for permanent residency petition work
- Virginia Tech approval form

Immigration Tracker
We use the Immigration Tracker secure online system to process permanent residency applications.

- Click to Enter Immigration Tracker
Which VT Employees Qualify?

- To receive Virginia Tech sponsorship, all of the following conditions must be met.
- The **position** must have the potential to be on-going with successive renewals over a period of several years. For positions funded from sponsored grants or contracts (or similar uncertain sources), the supporting unit must demonstrate a record of sustained external funding.

- The individual's **appointment** must be *full-time and salaried*, and in compliance with federal regulations, such as prevailing wage rate. (The appointment may be restricted or regular, either academic or calendar year, as long as it is salaried, full-time, and there is an expectation of successive renewals over a period of several years. Wage employment does not meet this test.)

- The position is **significant** and meets institutional needs as documented by the department and validated by the approval of the relevant senior manager. Significance may be signaled in part by rank and title, as well as documented in the job description and supported by the credentials of the individual:
  - Instructional Faculty: Ranks of Instructor and Assistant Professor or above, including clinical faculty, but excluding adjunct, wage, or visiting faculty members.
  - Special Research Faculty: All ranks EXCEPT postdoctoral associates, whose appointments are limited, by definition, to four years.
  - Administrative/Professional Faculty members with significant expertise critical to the university (rank not relevant).
  - Staff members with significant expertise critical to the university.

- The department verifies that they wish to retain the employee in the position indefinitely subject to availability of funding, need for services, and satisfactory performance.

- Policy available at: [http://www.oired.vt.edu/iss/permanent-residency/](http://www.oired.vt.edu/iss/permanent-residency/)
LPR Approval Form

VIRGINIA TECH APPROVAL FORM
EMPLOYMENT-BASED IMMIGRATION APPLICATION

Employee Name: ___________________ Social Security Number: ________________

Type of Petition Requested: Permanent Residence (Green Card)
- Research Faculty
- Instructional Faculty
- Administrative/Professional Faculty
- Classified Staff

Effective Date of Appointment: ___________________

Department: ___________________ Mail Code: ___________________

Contact Person in Department: ________________ Phone: ________________

Will department funds be used to pay for or reimburse any costs associated with this petition?
- Yes
- No

Will provide department funds be used only for Employment-Based PERM Labor Certification?
- Yes
- No

Attach: Appointment Letter; Department Request Form; CV

Department Head: ___________________ Signature: ___________________

Academic Dean or Vice President: ___________________ Signature: ___________________

Provost Office (for research faculty only) Signature: Patricia B. Byer

Research Division (for research faculty only) Signature: Sandra K. Muse

Personnel Services (for classified staff & AF faculty only) Signature: Linda Woodard

General Counsel Signature: K. Heldbruder /MB Nash
Labor Certification: Req’d vs. Exempt

Labor Certification Required

1. Optional Special Recruitment for college and university teachers
2. Basic Labor Certification - required for most non-teaching positions

Exempt from Labor Certification

1. Outstanding professors and researchers
2. Persons with Extraordinary Ability
3. Persons of Exceptional Ability seeking a National Interest Waiver of the Job Offer Requirement (Labor Certification Requirement)
Step 1: The Labor Certification Application

**PURPOSE**

- Test the labor market to show
  1. Insufficient U.S. workers who are able, willing, qualified and available in the geographic area of employment
  2. Employment of the foreign national will not adversely affect the wages and working conditions of U.S. workers similarly employed

**METHOD**

- Optional Special Recruitment
  1. Available to college and university teachers
- Basic Labor Certification
  1. Required for all other occupations
  2. May be used for college and university teachers
Department of Labor is only Interested in “U.S. Workers”

*U.S. Worker means any worker who is:*

1. A U.S. citizen;
2. A U.S. national;
3. A Lawful Permanent Resident;
4. Granted temporary residence as a Special Agricultural Worker, or certain abused spouses/children of US Citizens and Permanent Residents;
5. A Refugee; or
6. An Asylee
### Qualified, Available and Willing

<table>
<thead>
<tr>
<th>Qualified</th>
<th>Available</th>
<th>Willing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Labor Certification: Meets the minimum qualifications for the position (unless college/university teacher)</td>
<td>US worker must be available to fill the position</td>
<td>US worker must be willing to accept the position</td>
</tr>
<tr>
<td>Optional Special Rec: Less qualified than the Applicant</td>
<td>E.G.s of accepted reasons Failure to appear for interview Must mitigate costs of in-person interview for executive/professional positions Failure to respond to repeated attempts to contact candidate</td>
<td>E.G. of accepted reason Refusal to provide references</td>
</tr>
<tr>
<td>Cannot reject US worker because they are overqualified for the position</td>
<td>E.G. of rejected reason Currently employed, must show unwilling to change job (two weeks notice held sufficient)</td>
<td>E.G.s of Rejected Reasons Statement that will not accept offered salary (must offer job) Refusal to provide Social Security Number (may not require until time of hire)</td>
</tr>
</tbody>
</table>
Optional Special Recruitment for College and University Teachers: Basic Requirements

- Position must entail some teaching duties (at least co-teaching one class a year)

  Labor Certification Application must be filed within 18 months of the date the Applicant was selected

  Competitive recruitment and selection process that included at least one ad in a national professional journal (one print ad or 30 day online ad). Must contain Job Title, Duties and Requirements

  Applicant must have met the requirements for the position before joining the employer

Virginia Tech
Optional Special Recruitment: Additional Requirements

• Posting notice at the worksite:
  • Must be posted for 10 consecutive business days
  • Must state that the notice is being posted in connection with the filing of a labor certification application
  • Must provide address for the US Department of Labor (USDOL) and state that interested persons may provide documentary evidence bearing on the application to the USDOL
  • Must be posted between 30 and 180 days before the application is filed
  • Must include the job title, position description and requirements for the position
Optional Special Recruitment: Additional Requirements (Continued)

- Prevailing wage determination
  - Issued by the US Department of Labor (up to 60 Days)
  - Offered salary must meet or exceed the prevailing wage
  - Must be valid at the time the application is filed
- Evidence of additional recruitment efforts undertaken
  Maintain copies of all other recruitment efforts
  - Newspapers
  - Listservs, websites, etc.
Contents of the National Journal Advertisement

• Cluster ads are acceptable, but the department name should be included.

• The ad must include the following:
  • Job title
  • Job duties (including teaching)
  • Minimum requirements for position
    • Applicant must meet minimum requirements for position at the time of selection
    • If degree not required until start date, ad should state that fact

• If multiple openings, should state that fact.
Optional Special Recruitment: Preparing the Application

- Form ETA 9089, Application for Permanent Employment Certification
  - Lists recruitment efforts undertaken
  - Lists requirements for the position
  - Lists the Applicant’s education and employment experience
- Filed electronically with the USDOL
  - Typical processing time is around 2-3 months
  - Random Audits are possible (9-12 months)
Optional Special Recruitment: Preparing the Application (Continued)

• Statement signed by the Department head that includes the following:
  1. The total number of Applicants for the job
  2. The reasons why the Applicant is more qualified than each U.S. worker who applied for the job
  3. A statement attesting to the degree of the Applicant’s educational or professional qualifications and academic achievements

• Final report of the Selection Committee making the recommendation or selection of the Applicant
Advantages over Basic Labor Certification

Special Recruitment
- Limited Recruitment Required
  - Saves time; typically already done
  - Saves money; usually no need to re-recruit
- Standard of Review
  - Most qualified vs. minimally qualified

Basic Process
- Extensive Recruitment Required
  - Additional time; at least 61 days to recruit
  - Additional expense; required to place certain ads (e.g., Sunday newspaper Ads)
- Standard of Review
  - Minimally qualified vs. Most Qualified (unless teaching position)
Basic Labor Certification
Process: Basic Requirements

• Position must be advertised with the **minimum** requirements for the position
  • Preferred or ideal requirements cannot be used to exclude US worker candidates
  • Applicant must have met the minimum requirements for the position before joining the employer
  • Exception for experience/skills gained with the same employer if they were gained in a position whose duties are more than 50% different than the current position
Basic Labor Certification: Required Recruitment – Professionals

1. Prevailing Wage Request from the US Department of Labor (60 days). Offered Salary must meet or exceed the Prevailing Wage.
2. Two Sunday Advertisements in the Newspaper of General Circulation (Roanoke Times)
3. Job order with the Virginia Employment Commission. Must be open for thirty days; must wait an additional thirty days before application may be filed.
4. Posting Notice:
   • Must be posted for 10 consecutive business days (i.e., 15 consecutive days)
   • Must state that the notice is being posted in connection with the filing of a labor certification application
   • Must provide address for the USDOL and state that interested persons may provide documentary evidence bearing on the application to the USDOL
   • Must be posted between 30 and 180 days before the application is filed
   • Must include the employer’s name, worksite (city, state), job title, salary position description and requirements for the position
Basic Labor Certification: Additional Recruitment - Professionals

1. Employer’s Website (www.jobs.vt.edu)
2. Job Search Website other than Employer’s (Roanoke Times Website)
3. Campus Placement Office (Virginia Tech Placement Office)
4. Any other Outlets Required by EA Office

All recruitment must be >30 days and <180 days at the time application is filed (exception for one of three additional steps)
Basic Labor Certification: Preparing the Application

- Form ETA 9089, Application for Permanent Employment Certification
  - Lists recruitment efforts undertaken
  - Lists requirements for the position
  - Lists the Applicant’s education and employment experience
- Filed electronically with the USDOL
  - Typical processing time is around 2-3 months
  - Random Audits are possible
Basic Labor Certification: Preparing the Application (Continued)

• Report signed by the Department head that includes the following:
  1. Description of the recruitment steps used
  2. The total number of Applicants for the job
  3. The reasons why each U.S. worker is not **minimally** qualified for the job (unless the position involves teaching duties) categorized by reason of rejection
     • Need not list the rejected candidates by name
     • Maintain resumes/applications of rejected candidates sorted by reason for rejection in case the DOL requests them
Communicating with Applicants

• Department of Labor expects employers to communicate with Applicants promptly e.g., within 15 days
  • Department of Labor has held that 30 days is too long

• Communications should be written and copies maintained
  • Department of Labor prefers certified mail, return receipt requested
  • At a minimum communication should be in email
Reviewing Applications

• If an application **clearly** shows that the Applicant is not qualified, may send written communication to the Applicant stating that they were found unqualified for the position.

• If there is **any** question as to the Applicant’s qualifications, duty is on the employer to contact the Applicant to clarify:
  • Field of study for degree not listed
  • Broad range of experience, education, training
Reviewing Applications (Continued)

• May phone candidate to resolve ambiguities
  • Keep detailed notes of the call
    • Date, time, questions and replies, length of Call
  • One unreturned call is not enough. Make multiple attempts to contact the candidate by phone, varying the time you call
  • Leaving message with third party is insufficient
    • Spouse/child
    • Parent
    • Roommate

• If unable to reach candidate by phone, send letter via certified mail, return receipt requested outlining basis for rejection and asking the candidate to contact you if resume was misinterpreted.
  • Set a deadline for the reply (e.g., two weeks from the date the candidate will receive the letter)
The Audit File

- Contains the signed recruitment report and copies of the recruitment used to support the application
- Will be maintained in my office
- Must be maintained for 5 years from the date the application is filed
- Departments should maintain resumes/applications of rejected U.S. workers (sorted by reason of rejection) and proof of correspondence with all rejected U.S. workers for five years from date application is filed
The Random Audit

- 10-20% Random Audit for compliance check
  - Required to send in recruitment report and proof of recruitment used in support of the application within 30 days of Audit Notification
  - If requested, must be prepared to submit applications/resumes of rejected U.S. workers sorted by reason for rejection
  - Typically creates a delay of at least 9-12 months
Costs of Labor Certification Application

- Advertising costs average $700 - $1,000
- No filing fee
- No legal fees if processed through my office
  - As of July 2007 the advertising costs must be paid by the **employer**
  - Employee may no longer pay advertising costs, and employer may no longer enter into reimbursement agreement with the employee to recover any costs associated with labor certification
Step 2: The Preference Petition (Form I-140)

- Filed with USCIS to show that the Applicant met the minimum requirements for the position as described on the ETA-9089 at the time it was filed. Employer is also required to show that it has had the ability to pay the proffered salary since the ETA-9089 was filed.
  - Must be received by the USCIS **within 180 days** of the approval of the ETA-9089
  - Expires after 180 days and would be required to re-do labor certification
  - No longer possible to use for worker other than named Applicant
Step 2: The Preference Petition
Form I-140 (Continued)

- Lists the minimum requirements for the position as shown on the ETA-9089

- A preference category will be assigned based on the minimum requirements for the position
Employment Based Second Preference (EB-2)

- **Members of the Professions with and Advanced Degree**
  - Position requires an advanced degree (master’s or higher) or its equivalent
    - Equivalent: Position requires a bachelor’s degree and at least five years of progressively responsible experience

- **Persons of Exceptional Ability**
  - Degree of expertise significantly above that ordinarily encountered; must show **at least** three of the following:
    1. Degree related to area of exceptional ability;
    2. Letter from current or former employer(s) showing at least 10 years of experience;
    3. License to practice the profession;
    4. Commanded high salary or remuneration;
    5. Membership in professional associations; or
    6. Recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations
Employment Based Third Preference (EB-3)

• Professionals
  • Baccalaureate degree
  • Position is a member of the professions

• Skilled Workers
  • Two years of training/work experience
  • Post-secondary education may be counted as training

• Other Workers
  • Less than two years of training/work experience
Cost of the Preference Petition

- Government filing fee of $580
  - May be paid by either the employer or the employee

- No legal fees since prepared by my office
Why Does the Preference Category Matter?

• There is often a wait for an immigrant visa within the EB-2 and EB-3 quotas.

• One’s place in the quota queue is a function of three factors
  1. Preference category
  2. Priority date
     • Priority date is the date the labor certification application was filed (or preference petition if exempt from labor certification)
  3. Your country of chargeability
     • Country of chargeability is the country in which beneficiary was born (even if they have acquired citizenship in a third country)
     • Cross-Chargeability: If the beneficiary’s spouse was born in a country other than the beneficiary, the beneficiary may claim the spouse’s country of chargeability
The Visa Bulletin

- The Visa Bulletin is published by the US Department of State ([http://travel.state.gov/visa/bulletin/bulletin_1360.html](http://travel.state.gov/visa/bulletin/bulletin_1360.html))

1. Published around the 15th of each month
2. Shows the current priority dates for each preference category
3. Subdivided by country of chargeability
4. In order to file the last step in the green card process (typically adjustment of status), the beneficiary’s priority date must be current in order to file third step
<table>
<thead>
<tr>
<th>Employment Based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born (Hong Kong, Macao and Taiwan Not Included)</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Other Workers</td>
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<tr>
<td>Certain Religious Workers</td>
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</table>
Step 3: Typically Adjustment of Status

• Final step in the process

• Filed while Applicant is in the United States
  • Interview typically waived in employment based cases

• Priority date must be current to file (if p/d current at time labor certification application is approved, will file at the same time as the preference petition (I-140))

• Also possible to do a “consular process” through US embassy/consulate in Applicant’s home country
  • Requires interview and medical examination in home country
Purpose of Step 3

- Ensuring that the Applicant is admissible to the U.S.
- Common grounds of inadmissibility
  1. Prior immigration violations
     - Disclose all
     - Waivers often available
     - Failure to disclose can lead to more serious adverse finding of fraud/misrepresentation
  2. Arrests/Convictions
     - Must disclose all arrests/convictions anywhere in the world (traffic tickets need not be disclosed, but DUI/DWI may require disclosure)
     - Not all arrests/convictions make one inadmissible
     - Waivers often available
     - Failure to disclose can lead to more serious adverse finding of fraud/misrepresentation
     - Must provide certified records
  3. Communicable Diseases
     - Will be required to obtain physical exam from designated physician
     - Must be able to document childhood vaccinations
Step 3: Who is eligible to file?

- The Beneficiary of the preference petition
- Spouse of the Beneficiary
- Dependent children of the Beneficiary
  - Unmarried
  - Under the age of 21
  - Step-child if step-relationship was created while child under 18
  - Adopted child if adopted before 16 and 2 years legal custody and residence with adopting parent
Documents Proving Qualifying Relationship

Must provide official civil documents to prove qualifying relationship(s)

- Birth certificates
  - Must be “long form” listing names of both parents
  - Beneficiary must also provide this document even if no dependents
- Marriage certificates
- If prior marriage(s) proof of termination
  - Divorce decrees
  - Annulment decrees
  - Death certificates
- Adoption Certificates

If documents unavailable

- Certificate of unavailability
- Affidavits from persons with personal knowledge of events

List of available documents

- [http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html](http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html)
- Select country from drop down menu
- Scroll down to “Documents” section

If document(s) not in English, must be translated
Ancillary Applications

- Will also file for Employment Authorization Document (EAD) and Advance Parole (travel document)
  - If on H-1B not necessary, but fee is included in filing fee
  - Spouses/Children on H-4 may work once they receive EAD
  - If have valid H-1B/H-4 visa may travel on that visa
  - 90-120 days for approval
Ancillary Applications

- Will also file for Employment Authorization Document (EAD) and Advance Parole (travel document)
  - Not necessary if on H-1B, but fee is included in filing fee
  - Spouses/Children on H-4 may work once they receive EAD
Costs of Step 3

Applicants between the age of 14 and 79
- Government filing fee of $1070
- Includes biometric fee of $85

Children under the age of 14
- Government filing fee of $635 if filed at the same time as application for at least one parent
- Government filing fee of $985 if not filed at same time as one parent
- No biometric fee required

Adults over the age of 79
- Government filing fee of $985
- No biometric fee required

Filing fees may be paid by employer or employee
- University does not reimburse filing fees for dependents

No legal fees if prepared by my office
- Will prepare applications for dependents if filed at same time as employee
- If dependents file after employee my office will not prepare their applications
  - May wish to consider hiring independent attorney to assist with applications
Outstanding Professors and Researchers

- Must show that professor or researcher is recognized internationally as outstanding in the academic field
- Offer of employment required
- No labor certification required
- May not self-petition
- All OPR petitions must be prepared by my office
Outstanding Professors and Researchers: The Job Offer

PROFESSORS
• Tenured or tenure-track teaching position within the academic field

RESEARCHERS
• Permanent research position
  • Tenured or tenure-track position
  • Term of indefinite or unlimited duration, in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination
Outstanding Professors and Researchers: Evidence Required

- Must show that employee is recognized internationally as outstanding in the field specified in the petition

- Must submit at least two of the following:
  1. Major prizes or awards for outstanding achievement in the academic field;
  2. 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 foreign national’s work in the academic field;
  4. Participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
  5. Original scientific or scholarly research contributions to the academic field; or
  6. Authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

- Letter(s) from current or former employer(s) showing at least three years of experience in teaching and/or research in the academic field
  - If experience gained while working on an advanced degree
    - full responsibility for the class taught
    - research conducted toward the degree has been recognized within the academic field as outstanding
Outstanding Professor Researcher: Subjective

• The Immigration Service can be subjective in weighing evidence submitted in support of these petitions

• Simply submitting two items from the list of six will not suffice
  • The Immigration Service engage in a “final merits determination” and must be convinced that the beneficiary is internationally recognized as outstanding in the field
  • Premium Processing is available for $1,225 (decision in 15 days)
How Long Does This Take?

- **Labor Certification**
  - Generally 4-6 months
  - If audited delay of more 9-12 months

- **Second Preference I-140**
  - 6 months

- **First Preference I-140**
  - 15 days - 6 months

- **Adjustment of Status**
  - 6-12 months

- **With Labor Certification, No Audit, No Quota Delay**
  - ~10-24 months

- **Without Labor Certification, No Quota Delay**
  - ~8-12 months

- **With Quota Delay**
  - 5-6 years depending on preference category & country of chargeability
Processes We Do Not Handle

- Family Based Immigration
  - E.G., Spouse of USC

- Waivers of the J-1 Home Residency Requirement

- Self-Petitions

- Later filed Adjustment of Status Applications for dependents