



**Immigration-Related Petitions and the Use of Outside Counsel for the Permanent Employment of International Faculty, Academic, and Staff Appointees**

**Office of International Student and Scholar Services,  
University of Kansas**

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In order to ensure compliance with all federal immigration and employment requirements, the University of Kansas has established the following policies and procedures to be followed for University-sponsored immigration petitions. They identify those petitions that will be handled by the Office of International Student and Scholar Services and those that must be referred to outside attorneys in accordance with University procedures.

**PETITION TYPES COVERED IN THIS DOCUMENT**

**Immigration Petitions for Initial or Temporary Status**

Most international academic and/or staff appointments (permanent and non-permanent alike) will first require the visa/immigration services of the Office of International Student and Scholar Services (ISSS) to enable the individual to commence the offered employment at KU. Petitions for non-immigrant (temporary) employment (H-1B, TN, O-1, J-1) are generally not referred to outside counsel and must be prepared by ISSS. Procedures for these processes are not affected by this policy and therefore are not detailed in this document.

**Immigration Petitions for Permanent Residency (Green Card) Status**

International employees without U.S. citizenship or lawful permanent residency (PR) status and their KU departments must work with ISSS if they wish to pursue employment-based routes to permanent residency (a green card). In order to pursue permanent residency, the offered position must meet the minimum requirements as defined below by the Office of the Provost and Executive Vice Chancellor and the Department of Human Resources and Equal Opportunity. Employment-based petitions for a green card are time-consuming and complex. The staff at ISSS provides comprehensive advising to departments and their employees on how they can best achieve their long-term employment goals.

**Self-Petitioned Immigration Applications for Permanent Residency Status**

The university cannot advise on and will not become involved with immigration applications when the KU employee self-petitions for achieving permanent resident status (National Interest Waivers and Aliens of Extraordinary Ability categories). Because these applications are not employment-based, the University cannot sponsor these types of petitions, even though the applicant

happens to be a KU employee. If individuals require outside assistance with these categories of petitions they must consult an attorney. Because such applications are not "employment-based," the Office of the General Counsel should be consulted before any employing unit contracts with outside attorneys to provide such services for their employees. The employing unit may not pay for such personal petitions unless they are able to demonstrate to the Dean or Designated Research Center Director that the petition is in the best interests of the employing department.

## **KU OFFICES INVOLVED WITH INSTITUTIONALLY-SUPPORTED IMMIGRATION PETITIONS**

The following division of service responsibilities has been established:

- **Office of International Student and Scholar Services (ISSS):**
  - 1) Provides services related to *temporary* (non-immigrant) visa petitions for international academic and staff appointees. These services include H-1B, O-1, J-1, and TN advising.
  - 2) **Provides services related to university-sponsored permanent immigration cases**, including centralized retention of federally mandated documentation for Labor Certifications filed by outside counsel.
- **Office of the General Counsel:** Will be consulted and must concur with a decision by an employing unit concerning the use of outside counsel for institutional matters relating to employment-based permanent residency applications.
- **Department of Human Resources and Equal Opportunity:** Upon gaining approval from ISSS to proceed with the steps toward obtaining permanent residency status, the employing department will work with HR/EO office to ensure that all necessary measures have been taken to comply with KU, state, and federal recruitment procedures. ISSS will refer hiring units directly to HR/EO if additional recruitment efforts are required. The HR/EO office is also responsible for professional position classification and for determining whether or not a position is considered temporary by KU.
- **Office of the Provost and Executive Vice Chancellor:** This office is responsible for position classification for academic appointees and for determining whether or not such positions are considered temporary by KU.

- **Hiring Unit:** The hiring unit is the office primarily responsible for moving the PR process forward for an international employee. A unit that wishes to pursue PR for an employee will need to facilitate completion of the appropriate PR intake form (described below); acquire the necessary signatures from the head of the employing unit, the appropriate Dean or Designated Research Center Director, and the Vice Provost for Research (for research positions that do not involve formal teaching); and provide all employer-related documentation in support of the PR process.

## OVERARCHING PRINCIPLES

### Procedures for All Petition Types

- All employment-based PR requests for KU academic and professional staff appointees must be routed through ISSS. Individual employees and departments may not work independently with an outside attorney without ISSS and General Counsel authorization.
- International employees in positions defined as temporary by KU are not eligible for an employment-based PR petition. Post-Doctoral researcher positions are among those that are considered temporary.
- The hiring unit should not promise PR to an international employee as the process is complex, lengthy, and inherently uncertain.
- The request to pursue PR that is submitted to ISSS must be approved by the Department Chair or Director, the relevant Dean or Designated Research Center Director, and, in the case of research positions, the Vice Provost for Research. If desired, individual units may set their own criteria for support of the PR process that are more stringent than the minimum University guidelines as outlined in this document.
- Departments are strongly encouraged to set up a preliminary informational meeting with an ISSS staff member to discuss the PR process in detail, go over the basic requirements for PR, and assess the employee's eligibility for institutional support before any indication is given to the employee that PR will be pursued. Timing guidelines for teaching and non-teaching positions, as outlined below, must be followed.
- ISSS has a formal intake process for departments that would like to pursue PR on behalf of an employee. Based on this intake process, ISSS will first make a determination as to whether the *position* meets the minimum University requirements for sponsorship. If the position meets these minimum requirements, ISSS will then determine whether the petition will be handled

internally by ISSS or should be referred to an outside attorney with ISSS serving as liaison.

- After a preliminary review of eligibility for institutional support, all non-teaching academic and professional staff positions will be channeled to the Department of Human Resources and Equal Opportunity for further review and processing to ensure that KU and U.S. Department of Labor recruitment procedures are followed.
- All documentation in support of a petition for permanent residency, academic and professional appointments alike, must reside with ISSS for a period of 5 years from the date of filing the petition.
- According to the latest federal regulations, hiring units are required to save all applicant resumes for non-teaching positions for 5 years. Copies must be made and provided to ISSS at the time of filing a PR application.

#### **Petitions to Be Processed By ISSS**

- ISSS will handle all Labor Certifications for teaching positions that meet the Department of Labor's criteria for special handling. To meet these criteria, the employee's formal job responsibilities must include serving as the instructor of record and the teaching of an official university course or courses. Other academic appointee positions must follow the guidelines for non-teaching positions as listed below. ISSS will assist academic appointees and their employing departments by identifying the most appropriate route to take toward establishing permanent residency. Departments may not use outside legal counsel for these petitions unless approved in advance by ISSS and General Counsel after receipt of the appropriate intake form.
- Applications for faculty and researchers who meet the criteria for Outstanding Professor or Researcher as defined by the Department of Homeland Security will also be processed directly by ISSS. To qualify, scholars must document that they are recognized internationally as outstanding in a specific academic area; have at least 3 years of experience in teaching and/or research; and be offered a tenured or tenure-track teaching position or a permanent research position. For more information on the eligibility requirements for this designation, please refer to ISSS's document entitled, *I-140 IMMIGRANT PETITION FOR OUTSTANDING PROFESSORS/RESEARCHERS*. Departments may not use outside legal counsel for these petitions unless approved in advance by ISSS and General Counsel.

- ISSS will process the above-referenced petitions at no charge to the hiring department or employee. The hiring department or employee will be required to pay all filing fees associated with the petition.

### **Petitions to Be Processed By Outside Counsel**

- Non-teaching positions will be handled by outside counsel unless the employee qualifies for the Outstanding Professor/Researcher designation.
- The hiring department and/or employee will be responsible for all fees as assessed by outside counsel for employment-based petition processing and filing. Note: departments are not allowed to cover the costs of filing personal immigration petitions for their employees (such as National Interest Waiver or Alien of Extraordinary Ability petitions) unless there is an appropriate and legitimate business reason for doing so.
- The hiring of outside legal counsel for University-related immigration petitions requires prior approval by ISSS and the Office of the General Counsel. The ISSS intake form will facilitate this process and must be submitted in all PR cases, regardless of whether KU will be filing the petition or if outside counsel will be hired.
- For outside referrals, ISSS will serve as the primary liaison between the hiring department and the attorney.
- ISSS is required to sign all outside attorney representation G-28 forms that enable designated legal counsel to work in support of an institutional immigration petition.
- ISSS must review and sign the immigration petition before it is submitted for processing by federal authorities.
- Personal petitions that do not require university support (National Interest Waiver and Alien of Extraordinary Ability) may be pursued with outside legal counsel, but guidance cannot be provided by KU.

### **CASE-SPECIFIC POLICIES**

#### **Positions with Teaching Responsibilities**

- Position must be full-time.

- To qualify for “special handling” as a teaching position, the position must include classroom teaching. Furthermore, the course must have a registered course number with KU and the employee must be listed as the instructor of record.
- Position must meet the Department of Homeland Security’s definition of permanent. A permanent position is one that is tenured, tenure-track or does not have a definite termination point defined either by a date or the completion of a project or assignment, is not seasonal or intermittent, and is not presently intended or contemplated by the employer to have some specified end date in the future.
- The position must have been advertised in a national print journal or publication. The U.S. Department of Labor will not accept electronic national professional journal ads, except in conjunction with printed national recruitment efforts.
- The date of the original offer letter from the Office of the Provost and Executive Vice Chancellor must have been within the last 15 months to allow ISSS to complete the required verification process in time to meet federal requirements.
- The head of the employing unit and the relevant Dean must sign off on the request to have ISSS review the position for PR eligibility.
- The completed ISSS Permanent Residency Intake Form for Teaching Positions (and all supporting documentation) must be received by ISSS before a formal review will occur.

### **Specific Policies for Non-Teaching Positions**

- Position must be full-time.
- Position must meet the Department of Homeland Security’s definition of permanent. A permanent position is one that does not have a definite termination point defined either by a date or the completion of a project or assignment, is not seasonal or intermittent, and is not presently intended or contemplated by the employer to have some specified end date in the future (and where the employee has an expectation of continued employment). Please note that Post-doctoral Researcher positions are not considered permanent by the university, as they have defined term limits.

- The international must have been working at the University in a professional position in the sponsoring unit for a minimum of 12 consecutive months prior to the time of submitting the ISSS Permanent Residency Intake Form. Excepted from this requirement are clinical faculty hires, research professorships (assistant, associate, and senior), and other unclassified academic staff appointees.
- The employing unit must have at least 36 months of expected future funding for the position held by the international employee, as verified by the Department Chair, Dean or Designated Research Center Director, and Vice Provost for Research on the ISSS PR intake form for non-teaching positions (see below). Grant-funded positions in which a three-year funding projection is not possible can still move forward if the unit provides a statement of intent to fund the international employee from grant funds, projected grant funds, or other funds available to the employing unit.
- The international employee and immediate supervisor must both participate in an ISSS Permanent Residency Information Session. This can be scheduled individually at any point.
- The head of the employing unit, the appropriate Dean or Designated Research Center Director, and the Vice Provost for Research must sign off on the request to have ISSS review the position for PR eligibility.
- The completed ISSS Permanent Residency Intake Form and all supporting documentation must be received by ISSS before a formal review will occur.
- Upon receiving ISSS's recommendation for pursuing an employment-based petition for PR:
  - Those eligible for the Outstanding Researcher or Professor category will be counseled directly by ISSS.
  - Those not eligible for the above will be referred to outside counsel and will be instructed on how to proceed in collaboration with ISSS, the Office of the Provost and Executive Vice Chancellor, and the Department of Human Resources and Equal Opportunity. The employing unit must be willing to undertake national re-recruitment procedures to enable KU to demonstrate to the U.S. Department of Labor that there are no minimally-qualified U.S. workers available to fill the position at the time of filing. By federal mandate, re-recruitment must be done between 180 and 30 days of filing Labor Certification. If a minimally qualified U.S. citizen, lawful permanent resident, refugee, or political asylee applies for and is

available to fill the position being advertised for, the hiring unit will be unable to use employment-based means to pursue permanent residency.