



TEXAS A&M
UNIVERSITY

Guidelines on Permanent Residence Sponsorship for Deans and Department Heads

International Faculty & Scholar Services

Dean of Faculties

979-862-1719 ☆ <http://ifss.tamu.edu>

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33.99.09 Employment of Foreign Nationals

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Regulation Statement

Members of The Texas A&M University System (system) shall employ foreign nationals as provided by this regulation.

Reason for Regulation

This regulation provides minimum procedures to be used by system members when employing foreign nationals. However, this regulation does not apply to the employment of international students.

Procedures and Responsibilities

1. ADMINISTRATION

- 1.1 Each system member must designate human resources or another office (designated office) to be responsible for the employment of foreign nationals on a full-time basis.
- 1.2 The International Faculty & Scholar Services Office (IFSS) at Texas A&M University is authorized to provide assistance to system members regarding immigration employment matters. This assistance includes, but is not limited to, reviewing supporting immigration documentation and facilitating the processing of immigration employment petitions after a contingent offer has been made by system members. IFSS is also authorized to act as an agent for system members in filing labor condition applications and applications for labor certification with the Department of Labor.

2. EMPLOYMENT OF FOREIGN NATIONALS IN THE UNITED STATES

- 2.1 It is unlawful to hire a foreign national knowing that the foreign national is not authorized to work in the United States.
- 2.2 Unless there is a legal requirement for a particular position, citizenship status shall not be used as a basis for discriminating against a foreign national. Federal law governs the employment of a foreign national. A system member may not request documentation that a person is eligible to work in the United States until a contingent offer of employment has been made. Each offer of employment should state that employment is contingent on the applicant's ability to provide employment eligibility documentation required by federal immigration laws.
- 2.3 The head of the hiring department or similar administrative unit proposing to employ a foreign national shall ensure that correspondence with the foreign national prior to obtaining the necessary approvals does not constitute a firm offer of employment.
- 2.4 The head of the hiring department or similar administrative unit proposing to employ a foreign national shall ensure that the proposed employment complies with all U.S. export control laws and regulations as indicated in System Policy 15.02, *Export Controls*.
- 2.5 The continued employment of a foreign national student immediately after graduation is not guaranteed and will be considered only on a case-by-case basis and may require a change in immigration status.

3. AUTHORITY TO APPROVE OFFERS OF EMPLOYMENT

- 3.1 The system member chief executive officer or designee must authorize the proposed employment of a foreign national. The head of the hiring department or similar administrative unit proposing to employ a foreign national shall initiate the request, including the necessary immigration information, and secure the appropriate official's approval to make an offer of employment.
- 3.2 The system member who extends the offer of employment is the employer of the foreign national employee. By extending an offer of employment, the system member creates an employer-employee relationship with the foreign national employee since the system member supervises, controls the work, approves leaves, evaluates performance, administers the disciplinary process and can terminate the employment of the foreign national employee. In cases where the foreign national employee is assigned to more than one department, unit or system member, the employer of such foreign national employee remains the system member who extended the offer of employment.

4. IMMIGRATION SPONSORSHIP FOR EMPLOYMENT

After an offer of employment is made, the head of the hiring department or similar administrative unit must contact the designated office for handling the employment of foreign nationals within the system member. The designated office will provide assistance regarding immigration matters, review supporting immigration documentation and facilitate the processing of immigration employment petitions, if appropriate.

5. RESPONSIBILITY OF HIRING DEPARTMENT OR UNIT

- 5.1 The head of the hiring department or similar administrative unit is responsible for assuring that an Employment Eligibility Verification form (Form I-9) is properly completed in a timely manner by the foreign national employee and the employer as provided in System Regulation 33.99.12, *New Employee Processing*, and in accordance with the provisions contained in the Immigration Reform and Control Act of 1986, as amended.
- 5.2 The head of the hiring department or similar administrative unit is responsible for contacting the designated office within the system member under the following circumstances:
- (a) when a foreign national employee gives notice to the department of a change of address;
 - (b) when a foreign national employee reports, or fails to report, for duty or terminates employment;
 - (c) when the nonimmigrant status of a foreign national employee requires extension or change to a different nonimmigrant category;
 - (d) when a system member contemplates sponsoring a foreign national employee for permanent resident status;
 - (e) when a foreign national employee requests authorization to engage in independent consulting and/or external employment;
 - (f) when a foreign national employee will occupy two (or more) separate positions within Texas state government (dual employment);
 - (g) when a foreign national employee requests leave without pay or an alternative work location;
 - (h) when a member contemplates changing the foreign national employee's scope of employment, training, work site, dates of employment, title, job description, salary or hours per week; or
 - (i) when a foreign national employee obtains permanent residency in the United States.
- 5.3 When the employment of a foreign national is terminated, due to voluntary or involuntary termination, the head of the hiring department or similar administrative unit is required to immediately notify the designated office of the date of such termination.

6. PETITIONS FOR NONIMMIGRANT EMPLOYMENT

- 6.1 Employment of nonimmigrant foreign nationals is an employer driven process requiring the employer's sponsorship and the filing of a written petition and corresponding documentary evidence with the U.S. Citizenship and Immigration Services for the purposes of obtaining the appropriate nonimmigrant status.
- 6.2 The head of the hiring department or similar administrative unit proposing to sponsor a foreign national for nonimmigrant status shall contact the designated office within the system member to initiate the process.
- 6.3 Each system member will determine in its sole discretion whether or not to sponsor a foreign national and file an employer-sponsored nonimmigrant status petition.
- 6.4 In addition to the responsibility set forth in Section 2.4, the head of the hiring department or similar administrative unit shall ensure that a deemed export control attestation is properly completed, if required, and complied with prior to the start of the proposed employment of the nonimmigrant foreign national.
- 6.5 Each system member is responsible, as the employer, to pay for reasonable and relevant costs and/or fees associated with filing a petition to sponsor a foreign national for nonimmigrant status, including the attorney's fees of outside counsel authorized to represent the system, if needed.
- 6.6 Each system member is responsible for the payment of the premium processing filing fee only in cases in which there is a business need on the part of the system member requiring the nonimmigrant petition to be filed under an expedited process.
- 6.7 The foreign national employee is solely responsible for filing petitions pertaining to dependents of the foreign national employee, including all costs and/or fees.
- 6.8 The foreign national employee is solely responsible for filing applications, including all costs and/or fees, relating to Department of State waivers or consular visa applications at U.S. consulates overseas in which the system member is not the petitioning party.

7. PETITIONS FOR PERMANENT RESIDENCY

- 7.1 Sponsorship for permanent residency is not an entitlement, and it is an employer driven process. A system member will only consider sponsoring positions for permanent residency if the positions are eligible for such sponsorship and it is clearly demonstrated to be in the best interest of the system member to do so.
- 7.2 Each system member will determine in its sole discretion whether or not to sponsor a foreign national and file an employer-sponsored immigrant status petition.
- 7.3 Petitions Requiring Sponsorship
 - 7.3.1 Sponsorship of a foreign national for immigrant status (permanent residency) requires an employer to offer either a permanent position or a tenure/tenure-track position.

- 7.3.2 The head of the hiring department or similar administrative unit proposing to sponsor a foreign national for immigrant status is responsible for developing a written justification that clearly explains how the proposed sponsorship is in the system member's best interest because it will meet critical scientific, teaching, public service and/or other needs. In addition, the written justification must address the following:
- 7.3.2.1 The foreign national has been employed with the sponsoring department for at least one year and has a current overall performance rating of above average or higher;
 - 7.3.2.2 Employment of the foreign national will continue for the foreseeable future;
 - 7.3.2.3 Funding to support the position is in place for a minimum of three years from the date of the written justification, and there is a reasonable expectation that funding for the position will continue for the foreseeable future beyond the initial three-year period; and
 - 7.3.2.4 There is a reasonable expectation that the foreign national employee will remain with the system for a minimum of three years after acquiring permanent residency.
- 7.3.3 The sponsoring department may further justify waiving the one-year employment requirement for tenured and tenure-track faculty with actual classroom teaching responsibilities that qualify for special handling under the employment-based second preference immigrant petition process or otherwise qualify under the employment-based first preference outstanding professor or researcher immigrant petition process.
- 7.3.4 The written justification must be approved by the appropriate vice president and dean of a university or the health science center, or the appropriate director and deputy or associate director of an agency.
- 7.3.5 After the written justification has been approved, as indicated in Section 7.3.4, the designated office within the system member will issue an administrative recommendation to the head of the hiring department or similar administrative unit regarding the immigrant process to be pursued.
- 7.3.5.1 The criteria adopted for sponsorship of a foreign national employee as an outstanding professor or researcher requires the foreign national employee to (a) possess at least three years of post-degree teaching or research experience and (b) establish, from a preponderance of the evidence, outstanding international accomplishments that overall make the foreign national employee stand apart in the academic community through eminence and distinction based on international recognition as an outstanding professor or researcher.

7.3.5.2 Legal opinions from immigration attorneys obtained by a foreign national employee or the personal opinions of a foreign national employee in regard to the foreign national employee's qualifications for sponsorship under a specific immigrant category are not binding on the system member.

7.3.6 Each system member is responsible, as the employer, to pay for reasonable and relevant costs and/or fees associated with filing a petition to sponsor a foreign national employee for immigrant status, including the attorney's fees of outside counsel authorized to represent the system, if needed.

7.3.7 The foreign national employee is solely responsible for filing a petition for adjustment of status to permanent resident and/or applications relating thereto, including all costs and/or fees.

7.3.8 The foreign national employee is solely responsible for filing petitions for the adjustment of status to permanent resident pertaining to dependents of the foreign national employee, including all costs and/or fees.

7.4 Temporary Positions that System Members Will Not Sponsor

Positions that a system member will not sponsor for permanent residency because they are temporary include: postdoctoral researchers, postdoctoral scholars, lecturers, researchers with fixed-term appointments, appointments ending with funding, exchange visitors, temporary employees and visiting appointments. Individual foreign national employees in these positions are not prevented from pursuing a self-sponsored immigrant petition provided a system member is not named as a petitioning employer.

7.5 Sponsorship of Staff Positions

A staff position may be considered for sponsorship by a system member only in exceptional cases when determined to be in the system member's best interest. Such cases, however, are expected to be rare and will require additional justification beyond that required in Section 7.3.2.

7.6 Petitions Not Requiring Sponsorship

7.6.1 Individual foreign national employees are not prevented from pursuing a self-sponsored immigrant petition at their own cost (*i.e.*, Extraordinary Ability or National Interest Waiver) provided a system member is not named as a petitioning employer. Assistance from a system member, if any, will be limited to an official letter of recommendation, if appropriate. A foreign national employee is responsible for notifying the head of his or her department regarding any change in immigration status resulting from a self-sponsored immigrant petition.

7.6.2 Individual foreign national employees are solely responsible for filing self-sponsored petitions, including all costs and/or fees.

8. RECORDS RETENTION OF IMMIGRATION EMPLOYMENT

Each system member is solely responsible for complying with federal and state records retention guidelines and policies on all immigration filings pertaining to the employment of foreign nationals. This includes, but is not limited to, H-1B public access and inspection files relating to Labor Condition Applications; Applications for Permanent Employment Certifications (labor certifications); and nonimmigrant and immigrant petitions.

9. EMPLOYMENT OF FOREIGN NATIONALS OUTSIDE OF THE UNITED STATES

9.1 Prior to hiring a foreign national as an employee of a system member to work outside the United States, the hiring department or similar administrative unit must contact the designated office within the system member for assistance in determining whether such a hiring could raise potential foreign tax, immigration, labor, export control or other legal issues.

9.2 The designated office within the system member will direct the hiring department or similar administrative unit to the appropriate office for assistance with issues arising out of the proposed hiring of foreign nationals to work outside the United States as employees of a system member. If the designated office needs assistance in determining requirements and compliance issues, the Office of General Counsel should be contacted.

10. CONTINUED EMPLOYMENT

A foreign national employee is responsible for maintaining valid immigration status and employment authorization to continue employment, and immediately notifying the head of his or her department regarding any change in immigration status. The head of each hiring department or similar administrative unit is responsible for ensuring that extensions or changes in immigration status are properly documented in a timely manner on a new or re-verified Form I-9 (Employment Eligibility Verification). An employing department must not continue to employ a foreign national employee knowing that the employee has become an unauthorized alien with respect to such employment and is unable to provide evidence of employment eligibility pursuant to federal law.

11. RETENTION OF COUNSEL

A private attorney must not be engaged to represent any system member in any nonimmigrant or immigrant petition or application unless approved by the Office of General Counsel in accordance with System Regulation *09.04.01, Legal Counsel and Attorney General Opinion Requests*. This regulation, however, does not prevent a foreign national employee from retaining individual counsel to obtain his or her own legal advice or representation.

Related Statutes, Policies, or Requirements

[Regulation 09.04.01, Legal Counsel and Attorney General Opinion Requests](#)

[International Faculty & Scholar Services](#)

Contact Office

Office of General Counsel
(979) 458-6120

FAQs ON PERMANENT RESIDENCE SPONSORSHIP (System Regulation 33.99.09)

◆ WHO PROPOSES SPONSORSHIP OF AN EMPLOYEE FOR PERMANENT RESIDENCE?

The head of the hiring department or similar administrative is solely responsible for proposing the sponsorship of a foreign national employee.

◆ IS EVERY EMPLOYEE ENTITLED TO BE SPONSORED FOR PERMANENT RESIDENCE?

No. At Texas A&M University permanent residence is not an entitlement, and it is an employer driven process.

◆ WHAT TYPE OF POSITIONS CAN BE SPONSORED FOR PERMANENT RESIDENCE?

Only positions that are tenured, tenure-track or permanent. Senior lecturer positions or equivalent and staff positions may be considered for sponsorship only in exceptional cases.

◆ ARE THERE SPECIFIC POSITIONS THAT CANNOT BE SPONSORED?

Yes. Temporary positions cannot be sponsored. These positions include, but are not limited to the following: Postdoctoral researchers, postdoctoral scholars, lecturers, researchers with fixed-term appointments, appointments ending with funding, exchange visitors, temporary employees and visiting appointments.

◆ DO LEGAL OPINIONS OBTAINED BY THE EMPLOYEE OR OTHER OPINIONS BIND TEXAS A&M UNIVERSITY?

No. Opinions obtained by the employee, whether legal or otherwise, on the employee's qualifications for sponsorship under a specific immigrant category are not binding.

◆ WHAT TYPE OF PERMANENT RESIDENCE CATEGORIES ARE AVAILABLE AT TAMU?

Texas A&M University pursues for its employees the following immigrant categories: (1) Outstanding Professor/Researcher; (2) Special Handling Labor Certification (labor certifications); (3) Regular Applications for Permanent Employment Certification (labor certifications)

◆ WHO MAKES THE RECOMENDATION ON THE PERMANENT RESIDENCE CATEGORY TO FOLLOW?

The International Faculty & Scholar Services office (IFSS) makes the recommendation to the department head on the type of permanent residence category that should be followed. This recommendation is generally based on the examination, among other evidence, of the foreign national's credentials and the type of position.

◆ WHO PREPARES AND FILES THE DIFFERENT IMMIGRANT CATEGORIES?

The Outstanding Professor/Researcher category and Special Handling Labor Certification are filed in-house by Texas A&M University IFSS. Regular Labor Certifications are generally filed by System authorized immigration outside counsel per prior recommendation of IFSS.

◆ WHEN CAN THE PERMANENT RESIDENCE PROCESS COMMENCE?

In general, the employee must be employed for at least one-year with the sponsoring department and must have a current overall performance rating of above average or higher.

However, for tenured or tenure-track faculty with actual classroom teaching the department head may further justify waiving the one-year employment requirement if they qualify for special handling or outstanding professor/researcher.

It is paramount that for Assistant Professor positions the sponsorship process be initiated as soon as possible so the university can take advantage of the Special Handling Labor Certification process within 14 months from the date of the offer letter.

◆ WHAT IS REQUIRED TO INITIATE THE SPONRSHIP?

A written justification for sponsorship approved by the Dean of the College, addressed to Provost and routed through IFSS explaining how the sponsorship in in the best interest of the institutions because it meets critical scientific, teaching, public service and/or other needs. The justification must also address:

- Employment for 1 year with the department before able to file, but System Regulation allows for waiver of the 1 year if employee is tenured, tenure-track and is further justified
- Current overall performance of above average or higher
- Employment will continue for foreseeable future
- Funding for position is in place for a minimum of 3 years
- Reasonable expectation employee will remain at TAMUS for a minimum of 3 years after acquiring permanent residence

◆ IF REGULAR LABOR CERTIFICATION IS RECOMMENDED, WHO CONTACTS IMMIGRATION OUTSIDE COUNSEL?

Contacting Immigration Outside Counsel requires previous approval from the International Faculty & Scholar Services (IFSS) at Texas A&M University. Depending on the nature of the matter IFSS will proceed to initiate the necessary contact after the specific need of the sponsoring department's has been identified. Examples of typical matters that are referred to Outside Counsel are the following:

- Issues is related to the preparation of a specific permanent residence petition for which no in-house service is available (generally the sponsorship of staff and researcher positions not qualifying as outstanding)
- Matters requiring the issuance of a legal opinion, and or a potential legal/litigation matter.

◆ WHO PAYS FOR THE FEES AND COSTS ON THE PERMANENT RESIDENCE PROCESS?

The sponsoring department is responsible for the payment of reasonable and relevant costs and/or fees including the attorney's fees of System authorized Immigration Outside Counsel. However, the sponsoring department is not required to pay:

- The Adjustment of Status process (I-485) costs and fees of the employee
- The Adjustment of Status process (I-485) costs and fees of any dependents of the employee

◆ ARE THERE OTHER TYPES OF EMPLOYMENT BASED PERMANENT RESIDENCE CATEGORIES NOT SPONSORED BY TAMU?

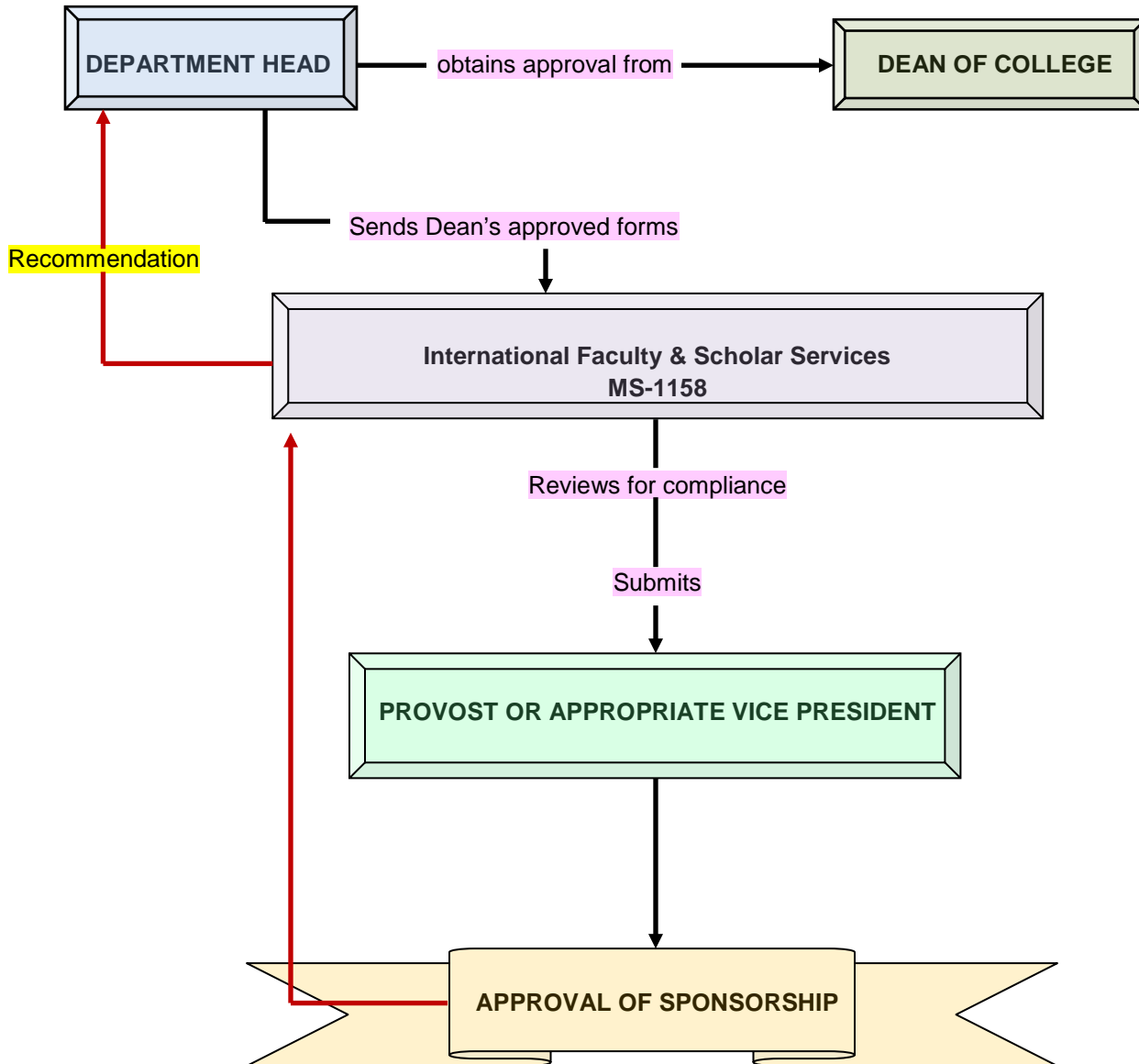
Yes. These are the Extraordinary Ability and the National Interest Waiver. These petitions do not require Texas A&M University's sponsorship. As a result, the foreign national employee can pursue a self-sponsored petition provided Texas A&M University is not named as a petitioner employer. Texas A&M

University's assistance with these petitions are limited to an official letter of recommendation, if appropriate.

◆ **CAN THE EMPLOYEE USE AN IMMIGRATION ATTORNEY?**

The employee cannot engage a private attorney to represent Texas A&M University on an employer based permanent residence matter unless approved by the Office of General Counsel. However, the employee is free to retain a private attorney to obtain his or her legal advice.

Texas A&M University PERMANENT RESIDENCE SPONSORSHIP ROUTING FLOWCHART



FILING OPTIONS AND INTERNAL PROCESSES

GENERAL CRITERIA FOR IMMIGRANT ROUTE FILING		
SPONSORSHIP OPTION	1st OPTION	2nd OPTION
Tenured Faculty	Outstanding Professor/Researcher	Special Handling
Assistant Professors	Special Handling	Outstanding Professor/Researcher beyond mid-term review (4-6 year)
Sr. Lecturers	Special Handling	Regular Labor Certification
Researcher Scientists	Outstanding Researcher	Regular Labor Certification
Researchers (others)	Regular Labor Certification	Outstanding Researcher (only for Associate Research Scientists if applicable)
Professional Staff	Regular Labor Certification	N/A

The foregoing chart depicts in general the type of recommendation that IFSS will issue on the permanent residence category to pursue. Recommendations are based on a case by case analysis of the curriculum vitae of the employee (years of experience, academic/scientific accomplishments and degree requirements).

Special Handling Cases

1. The department will complete and forward a Permanent Residence Request Form found on <http://ifss.tamu.edu> along with the foreign national's CV, copy of advertisement used to recruit the employee and a justification letter.
2. IFSS routes the request to the Provost for review and approval.
3. After receipt of approval, IFSS makes recommendation to department, forwards a questionnaire to the department for the employee's completion and return and outlines the steps the department can anticipate from this point forward.
4. IFSS files a request with the Dept. of Labor for a prevailing wage determination.
5. IFSS prepares and provides the academic department with a Notice of Filing of a Labor Certification to be posted in two conspicuous locations for 10 days at the location where the employment will take place. If the department routinely posts openings on their website, the department will be encouraged to post the same notice for the same period of time as the physical notices.
6. Upon receipt of the prevailing wage and after the prescribed 30-day wait period has been met (FOLLOWING the 10-day posting period), IFSS will prepare the 9089 (labor certification):

- a. IFSS provides the academic department a DRAFT of the 9089 to verify that all employment information is correct;
 - b. IFSS provides the employee a DRAFT of the 9089 to confirm the personal information and prior employment history is accurate.
7. IFSS files Labor Certification electronically with the Dept. of Labor establishing a priority date.
8. If the case is audited by the Dept. of Labor, IFSS will contact the academic department and respond as necessary.
9. Upon receipt of the approved Labor Certification, IFSS will contact the employee to sign the labor certification.
10. IFSS will prepare and file the I-140 Immigrant petition with the USCIS.

Outstanding Professor/Researcher Cases

1. The department will complete and forward a Permanent Residence Request Form found on <http://ifss.tamu.edu> along with the foreign national's CV, copy of advertisement used to recruit the employee and a justification letter.
2. IFSS routes the request to the Provost for review and approval.
3. After receipt of approval, IFSS makes recommendation to department and outlines the evidence the employee will need to furnish to start working on the case
4. IFSS will contact employee to start compiling evidence in support of the outstanding case
5. Upon receipt of all the required evidence IFSS will prepare a tabbed dossier of the evidence and will draft the cover letter explaining the reasons why the employee is outstanding and pointing out the enclosed evidence in support of the claims made.
6. A draft of the cover letter will be provided to the employee and department head to verify that all assertions are accurate.
7. Thereafter IFSS will prepare Form I-140 and file the case with USCIS.

OUTSTANDING PROFESSOR/RESEARCHER 1st PREFERENCE CATEGORY
(DOES NOT REQUIRE A LABOR CERTIFICATION)

EB-1.2 IMMIGRANT PETITION	FACULTY (Classroom Teaching Responsibilities)	RESEARCHER (including faculty with Non-Teaching Responsibilities)
QUALIFICATION REQUIREMENTS	Internationally recognized as outstanding in the academic field with at least 3 years of post-Ph.D. teaching or research experience	Internationally recognized as outstanding in the academic field with at least 3 years of post-Ph.D. research experience
CRITERIA FOR FILING	Preponderance of evidence must show outstanding international accomplishments that overall make the employee stand apart in the academic community through eminence and distinction based on international recognition as outstanding (§7.3.5.1 System regulation 33.99.09)	Preponderance of evidence must show outstanding international accomplishments that overall make the employee stand apart in the academic community through eminence and distinction based on international recognition as outstanding (§7.3.5.1 System regulation 33.99.09)
TYPE OF JOB OFFER	Tenured or Tenure-Track	Permanent job offer
PRIMA FACIE DOCUMENTARY EVIDENCE (U.S.C.I.S. REQUIREMENTS)	<ul style="list-style-type: none"> • Major prizes or awards for outstanding achievements • Memberships requiring outstanding achievements • Published materials by others about the work • Judging the work of others • Original scientific or scholarly research contributions • Publications in journals with international circulation 	<ul style="list-style-type: none"> • Major prizes or awards for outstanding achievements • Memberships requiring outstanding achievements • Published materials by others about the work • Judging the work of others • Original scientific or scholarly research contributions • Publications in journals with international circulation
SECTION 7 OF SYSTEM REGULATION 33.99.09 AND SECTION 7 OF TAMU RULE 33.99.09.M1	<p>Written justification for sponsorship addressed to Provost and routed through IFSS explaining:</p> <ul style="list-style-type: none"> • Why it meets critical scientific/teaching/public/other needs • Employed for 1 year with the department before able to file but Regulation allows for waiver of the 1 year if further justified • Current overall performance of above average or higher • Employment will continue for foreseeable future • Funding for position is in place for a minimum of 3 years • Reasonable expectation employee will remain at TAMUS for a minimum of 3 years after acquiring permanent residence 	<p>Written justification for sponsorship addressed to Provost and routed through IFSS explaining:</p> <ul style="list-style-type: none"> • Why meets critical scientific/public/other needs • Employed for 1 year with the department before able to file • Current overall performance of above average or higher • Employment will continue for foreseeable future • Funding for position is in place for a minimum of 3 years • Reasonable expectation employee will remain at TAMUS for a minimum of 3 years after acquiring permanent residence

SPECIAL HANDLING LABOR CERTIFICATION
2nd PREFERENCE CATEGORY
(LABOR CERTIFICATION REQUIREMENT)

EB-2 PREFERENCE SPECIAL HANDLING PETITION	FACULTY (Classroom Teaching Responsibilities)
QUALIFICATION REQUIREMENTS	Must hold a degree above a bachelor's, which is required for the position and Department must be able to document that the faculty member was selected for the job opportunity in a <u>competitive recruitment and selection process</u> through which the faculty member was found to be more qualified than any of the United States workers who applied for the job opportunity
TYPE OF JOB OFFER	Full time Tenured or Tenure-Track Faculty with actual classroom teaching responsibilities
PRIMA FACIE DOCUMENTARY EVIDENCE (D.O.L. REQUIREMENTS)	<p>(1) <u>A statement, signed by an official</u> who has actual hiring authority from the employer, outlining in detail the competitive recruitment procedures undertaken; and which must set forth:</p> <ul style="list-style-type: none"> - The total number of applicants for the job opportunity; - The specific lawful job-related reasons why the faculty member is more qualified than each United States worker who applied for the job <p>(2) <u>A final report</u> of the faculty, student, and/or administrative body making the recommendation or selection of the international faculty member, at the completion of the competitive recruitment and selection process;</p> <p>(3) <u>A copy of at least one advertisement for the job opportunity</u> placed electronically for 30 days and/or in print in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties and requirements;</p> <p>(4) <u>Evidence of all other recruitment sources</u> utilized;</p> <p>(5) <u>A written statement attesting to the degree</u> of the alien's educational or professional qualifications and academic achievements; and</p> <p>(6) <u>Notice of the filing of an Application for Permanent Employment Certification</u> which must be provided between 30 and 180 days before filing the application.</p>
TAMUS REGULATION 33.99.09 AND TAMU RULE 33.99.09.M1 §7 REQUIREMENTS	<p>Written justification for sponsorship addressed to Provost and routed through IFSS explaining:</p> <ul style="list-style-type: none"> • Why it meets critical, scientific needs • Employed for 1 year with the department before able to file but Regulation allows for waiver of the 1 year if further justified • Current overall performance of above average or higher • Employment will continue for foreseeable future • Funding for position is in place for a minimum of 3 years • Reasonable expectation employee will remain at TAMUS for a minimum of 3 years after acquiring permanent residence
RECOMMENDATION ON WHEN TO SPONSOR	U.S. Department of Labor regulations state that Special Handling Labor Certification <u>must be filed within 18 months</u> from the date the selection was made (date of the offer letter)
RETENTION OF DOCUMENTS	Copies of the filed Labor Certifications and supporting documentation MUST be retained for 5 YEARS by the employer from the date of the filing of the Application for Permanent Employment Certification

HOLDERS OF ADVANCE DEGREE/REGULAR LABOR CERTIFICATION
(LABOR CERTIFICATION REQUIREMENT)

EB-2 PREFERENCE REGULAR PERM PETITION	RESEARCHERS & FACULTY WITH NON-TEACHING RESPONSIBILITIES
QUALIFICATION REQUIREMENTS	Must hold a degree above a bachelor's, which is required for the position
TYPE OF JOB OFFER	Must have a permanent full-time position
PRIMA FACIE DOCUMENTARY EVIDENCE (D.O.L. REQUIREMENTS)	<p>(A) <u>Two mandatory steps:</u></p> <ol style="list-style-type: none"> 1. Job order with TWC by which the university will need to place the job posting on TWC's website for 30 days. Once it is posted on TWC's website, keep a record of the date it went up. 2. Two print advertisements <p>(B) <u>Additional recruitment steps:</u></p> <p>(1) The university will need to include the job postings on its website. Keep a record of the date the posting went up.</p> <p>(2) Notice of posting needs to be posted for 10 business days. After the ten days, complete the bottom and return the form to our office. Please note that if the university uses any type of in-house media, such as intranet, newsletter, etc. for recruiting, this posting must also be included in such.</p> <p>(3) You must select three additional recruitment steps from the alternatives listed below [see 20 CFR §656.17(e)(i) and (ii)]. Only one of the additional steps may consist solely of activity that took place within 30 days of the filing of the LC. None of the steps may have taken place more than 180 days prior to the filing of the LC:</p> <ol style="list-style-type: none"> (a) Job fairs (b) Employer's website (c) Job search website other than the employer's (d) On-campus recruiting (e) Trade or professional organizations (f) Private employment firms (g) Employee referral program with incentives (h) Campus placement offices (i) Local and ethnic newspapers (j) Radio and television advertisements
TAMUS REGULATION 33.99.09 AND TAMU RULE 33.99.09.M1 REQUIREMENTS	<p>Written justification for sponsorship addressed to Provost and routed through IFSS explaining:</p> <ul style="list-style-type: none"> • Why meets critical scientific/public/other needs • Employed for 1 year with the department before able to file • Current overall performance of above average or higher • Employment will continue for foreseeable future • Funding for position is in place for a minimum of 3 years • Reasonable expectation employee will remain at TAMUS for a minimum of 3 years after acquiring permanent residence
RETENTION OF DOCUMENTS	Copies of the filed Labor Certifications and supporting documentation MUST be retained for 5 YEARS by the employer from the date of the filing of the Application for Permanent Employment Certification

DOES MY EMPLOYEE QUALIFY AS AN OUTSTANDING PROFESSOR/RESEARCHER?

◆ WHAT IS THE CRITERION ADOPTED BY THE TEXAS A&M UNIVERSITY SYSTEM IN REGULATION 33.99.09?

Section 7.3.5.1 of the regulation establishes two requirements for sponsorship under the outstanding professor or researcher category. The employee must:

- (a) Possess at least three years of post-degree teaching or researching experience, and
- (b) Establish from a preponderance of the evidence, outstanding international accomplishments that overall make the foreign national employee stand apart in the academic community through eminence and distinction based on international recognition as an outstanding professor or researcher

◆ HOW DOES IFSS DETERMINE WHETHER OR NOT THE EMPLOYEE QUALIFIES FOR SPONSORSHIP UNDER THIS CATEGORY?

IFSS obtains guidance on the interpretation of the regulatory criteria contained in 8 CFR §204.5(i)(3)(i) from the following sources:

- (1) Decisions from the USCIS Administrative Appeals Office (AAO)
- (2) USCIS Policy Memoranda
- (3) USCIS Adjudicator's Manual
- (4) TAMU Tenure Indicators of Excellence

AAO Decisions provide IFSS with the thinking and interpretation of the criteria listed in the federal regulations in regards to the outstanding category.

Policy memoranda and the Adjudicator's Manual provide IFSS with the instructions given to USCIS adjudicators in the analysis of the petitions. For example, USCIS in a recent Policy Memorandum indicated that *"meeting the minimum requirement by providing at least two types of initial evidence does not, in itself, establish that the alien in fact meets the requirements for classification as an outstanding professor or researcher under section 203(b)(1)(B) of the INA.....USCIS officers should evaluate the evidence together when considering the petition in its entirety to make a final merits determination of whether or not the petitioner, by a preponderance of the evidence, has demonstrated that the alien is recognized internationally as outstanding in a specific academic area."*

Tenure indicators of excellence used by the different colleges generally point to the type of evidence required to support an outstanding professor/research petition.

◆ IF THE EMPLOYEE RESEARCHES, PUBLISHES, HAS BEEN CITED AND DOES PEER REVIEWING, DOES THE EMPLOYEE QUALIFY AS OUTSTANDING?

The mere fact of researching, publishing, being cited or performing peer reviewing work does not per se qualify the faculty member for the outstanding category. That is, all of these activities are routine to their field. To qualify for the outstanding category, the evidence must demonstrate how these activities have made the faculty member stand apart as compared to his/her peers.

OUTSTANDING PROFESSOR/RESEARCHER QUALIFYING INDICATORS

In completing this form, the Department Head and employee must identify which indicators the employee meets and provide as much information as possible.

Employee's Name: _____
 Department: _____

QUALIFYING INDICATORS	EVIDENCE
AWARDS	
Major national or international awards for outstanding achievements (No student awards, grants, fellowships, scholarships or institutional awards)	<input type="checkbox"/> Title of award(s) <input type="checkbox"/> Name of organization granting the award <input type="checkbox"/> National/international significance of the award(s) <input type="checkbox"/> Date of receipt <input type="checkbox"/> Specify how many awards of the type received are given each year
MEMBERSHIPS	
Membership in a national/international professional organization requiring outstanding achievements	<input type="checkbox"/> Name of organization <input type="checkbox"/> Type of membership (Fellow, Honorary, Other)
TEACHING	
Professional society outstanding teaching awards	<input type="checkbox"/> Name of society <input type="checkbox"/> Title of award(s) <input type="checkbox"/> Date of receipt
Publication of widely adopted or acclaimed instructional materials	<input type="checkbox"/> Title of material(s) <input type="checkbox"/> Where was it published <input type="checkbox"/> Where has it been adopted
Graduate students supervised/chaired	<input type="checkbox"/> MS (number) <input type="checkbox"/> granted <input type="checkbox"/> on going <input type="checkbox"/> PhD (number) <input type="checkbox"/> granted <input type="checkbox"/> on going

Major contributions to the development of new instructional programs	<input type="checkbox"/> Specify
Receipt of significant peer-reviewed external funding for teaching	<input type="checkbox"/> Specify
Invitation to teach at a domestic or international institution of recognized excellence	<input type="checkbox"/> Name of the institution(s) <input type="checkbox"/> Period(s) of teaching
Outstanding teaching performance as evidenced by outstanding student ratings	<input type="checkbox"/> Specify
Outstanding peer evaluations or outstanding direction of graduate research	<input type="checkbox"/> Specify
Other teaching accomplishments	<input type="checkbox"/> Specify

REVIEWING

Membership on review panel(s) for national or international research organization(s)	<input type="checkbox"/> Name of organization(s) <input type="checkbox"/> Number of projects/grants/proposals reviewed
Reviewer for major refereed professional journals in the field	<input type="checkbox"/> Name of journal(s) <input type="checkbox"/> Amount of articles reviewed per year <input type="checkbox"/> Number of journals served as reviewer
Ad hoc reviewer for national or international research organizations	<input type="checkbox"/> Name of organization(s) <input type="checkbox"/> Number of projects/grants/proposals reviewed
Reviewer for text book publishers	<input type="checkbox"/> Name of publisher(s) <input type="checkbox"/> Number of books reviewed
Solicitation of scientific expertise from colleagues, former students, industry, organizations	<input type="checkbox"/> Emails <input type="checkbox"/> Letters <input type="checkbox"/> Other

PUBLICATIONS & RESEARCH

Articles published in leading peer-reviewed journal	<input type="checkbox"/> Name of journal(s) <input type="checkbox"/> Impact factors <input type="checkbox"/> Amount of articles
Peer-reviewed proceedings	<input type="checkbox"/> Specify
Published books/monographs	<input type="checkbox"/> Specify
Published book chapters	<input type="checkbox"/> Specify
Editor or member of editorial board of a major leading journal	<input type="checkbox"/> Name of journal(s) <input type="checkbox"/> Period of time in that role
Frequent citation of publications/excluding self-citations	<input type="checkbox"/> Total amount of citations <input type="checkbox"/> Database used
Articles written by others about the employee's research work (the work must be the subject of the articles themselves)	<input type="checkbox"/> Number of article(s) <input type="checkbox"/> Name of journal(s) <input type="checkbox"/> Date(s) of publication
Refereed conference presentations	<input type="checkbox"/> Invited – (number) <input type="checkbox"/> National – (when-where-dates) <input type="checkbox"/> International - (when-where-dates)
Receipt of competitive external research funding	<input type="checkbox"/> Total awards <input type="checkbox"/> Awards to candidate <input type="checkbox"/> Role of candidate <input type="checkbox"/> Date of receipt <input type="checkbox"/> Number of research grants concluded <input type="checkbox"/> Number of research grants on-going

Significant publication and/or funding resulting from collaborative efforts with researchers in other fields where the faculty member occupies a substantial role in research	<input type="checkbox"/> Specify
Other research, scholarship, or creativity accomplishments	<input type="checkbox"/> Patents awarded <input type="checkbox"/> Technology transfers/licenses <input type="checkbox"/> Other
Research/scholarship/creativity recognitions and awards	<input type="checkbox"/> Specify
SERVICE	
Program chair or in a similar position at a national or international meeting	<input type="checkbox"/> Specify
Organizing national or international symposia or workshops	<input type="checkbox"/> Specify
Officer in a national or international professional organization	<input type="checkbox"/> Specify
Service on a major governmental commission, task force, or board	<input type="checkbox"/> Specify
Contributions to government, industry or commerce	<input type="checkbox"/> Specify

Signature of Employee

Date

Signature of Department Head

Date