

# GREEN CARD BASICS

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INTERNATIONAL SCHOLARS OPERATIONS

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# TODAY'S TOPICS

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- **Introduction to Legal Permanent Residence**

- Family-based
- Employment-based
- Other bases

- **The UW Process**

- Step 1: Recruitment and selection
- Step 2: Labor Certification
- Step 3: Immigrant Petition
- Step 4: Adjustment of Status

- **EB-1B Outstanding Researchers & Professors**

- **Troubleshooting**

- When to re-recruit
- Priority date delays
- Ineligibility grounds
- Incompatible visas
- Preserving permanent residence

- **Q&A**

# INTRODUCTION TO GREEN CARDS



# WHAT IS A GREEN CARD?

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**Legal permanent residence (documented by an LPR card or “green card”)** is (practically) unconditional permission to reside and work in the U.S.

It usually requires a petition to USCIS for an “immigrant visa number”.

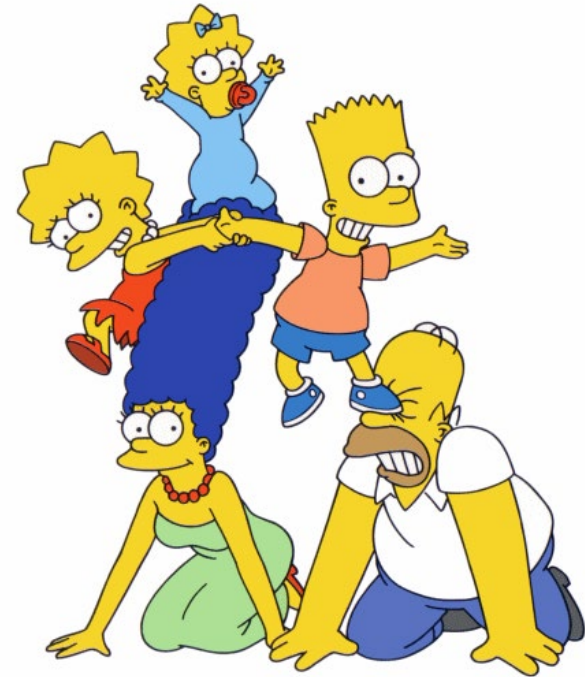
# FAMILY-BASED PERMANENT RESIDENCE

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Can be obtained by:

- Spouses, children, and parents of U.S. citizens ("**immediate relatives**")
- Siblings of U.S. citizens
- Spouses and children of U.S. permanent residents

In general, **immediate relatives** can get permanent residence fairly quickly, while other relatives may have substantial wait times.



# EMPLOYMENT-BASED PERMANENT RESIDENCE

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## **Employer-sponsored:**

- EB-1 Outstanding Researcher/Professor or Multinational Manager
- EB-2 Advanced Degree Professional or National Interest Waiver
- EB-3 Skilled Worker
- EB-4 Special Worker

## **Self-sponsored:**

- EB-1 Extraordinary Ability
- EB-2 National Interest Waiver
- EB-5 Immigrant Investor



# OTHER GREEN CARDS

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- Refugees/Asylees
- Diversity visa lottery
- Survivors of domestic abuse, trafficking, or other crime
- Special Immigrant Juveniles
- Cuban emigres

# RELEVANT AGENCIES:



## **Office of Foreign Labor Certification**

- Issues prevailing wage determinations
- Certifies labor certifications for employment-based green cards



## **U.S. Citizenship and Immigration Services**

- Adjudicates family- and employment-based petitions
- Issues green cards



## **Bureau of Consular Affairs**

- Allocates "immigrant visa numbers"
- Issues immigrant visas



# SHOULD I ASK HOW SOMEONE GOT THEIR PERMANENT RESIDENCE?

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**No!**

If someone presents an unexpired green card, they are **eligible for employment.**

You don't need to know the basis for their residency or to advise them on its ramifications.

# THE UW PROCESS

# UW SPONSORSHIP

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All UW-sponsored permanent residence **must** go through ISO.

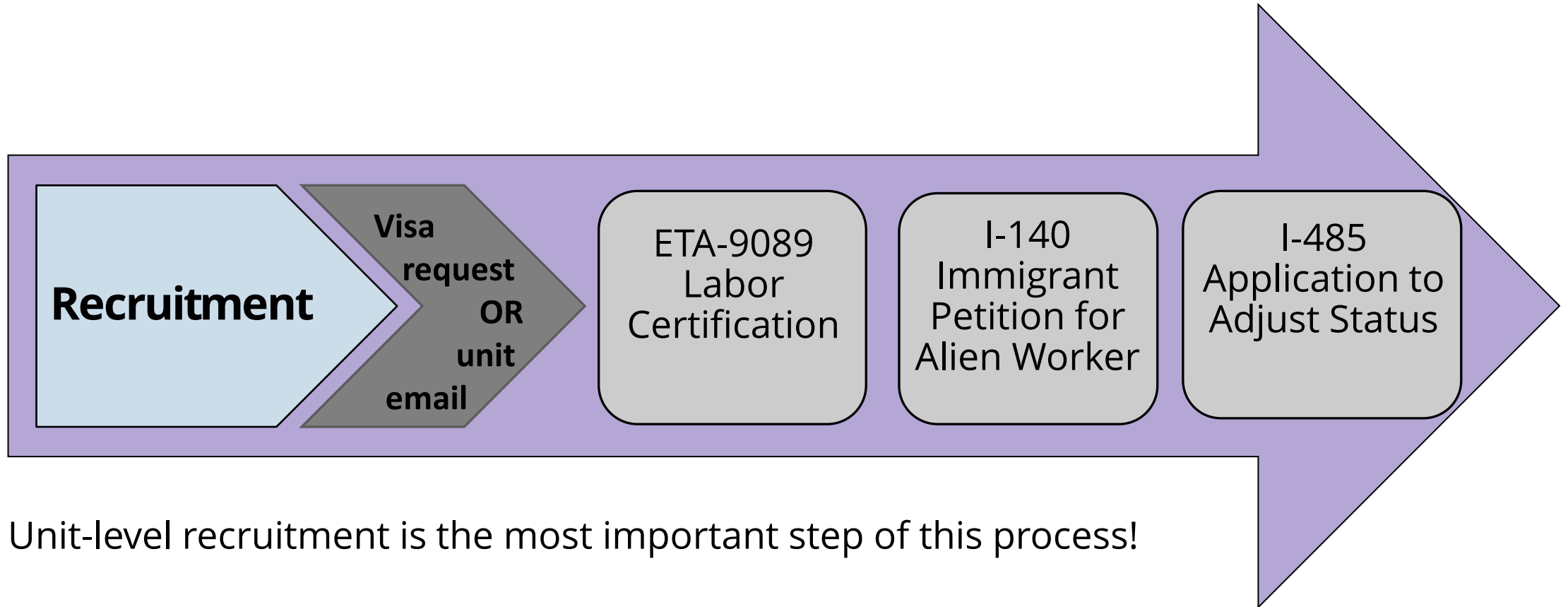
UW sponsors the following faculty titles through the **EB-2 Advanced Degree Professional** category:

- **Assistant, associate, and full professors**  
(with or without tenure)
- **Research assistant, associate, and full professors**
- **Clinical assistant, associate, and full professors**  
(Dental Pathway only)
- **Assistant, associate, and full teaching professors**

To be eligible, must be a **full-time, permanent position with some teaching duties.**

# STEPS TO PERMANENT RESIDENCE

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# STEP 1: RECRUITMENT AND SELECTION

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Sponsorship requirements include:

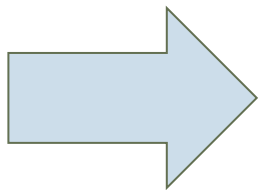
- **Unit must publish ad that:**
  - Runs in a professional print journal **or** *The Chronicle of Higher Education* online for **at least 30 days**
  - Requires an advanced degree (master's or doctorate) in a related field
  - Includes some mention of teaching duties
- The foreign national must:
  - **Meet the minimum requirements** for the position **and**
  - Be **the most qualified candidate** for the position

# ADVERTISEMENT BEST PRACTICES

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To make sponsorship easier:

- List all requirements clearly and precisely
- List all acceptable U.S. degree(s) and include “or foreign equivalent”
- Avoid “preferences” and excessive requirements
- Copy approved Interfolio position wording **exactly** for any external ads



Remember that you must provide documentation that the candidate meets **every single** requirement and preference.

See [Creating Ads for Permanent Residence Sponsorship Eligible Positions](#) and our [2022 Interfolio Ad Creation](#) slide deck for further guidance.

# STEP 2: ETA-9089 LABOR CERTIFICATION

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Once ISO knows of an eligible faculty member, ISO will prepare to file this with the Department of Labor to initiate permanent residence sponsorship.

ISO will gather the following from the unit:

- a. Documentation that foreign national meets all position requirements
- b. [Competitive Recruitment Report](#) describing recruitment process and confirming foreign national was most qualified applicant
- c. Proof that position was appropriately advertised and notice given to U.S. workers
- d. All information necessary for the ETA-9089

# CLOCKS ARE TICKING AT STEP 2...



## Recruitment Clock

ETA-9089 must be filed **within 18 months** of date of *first* offer letter



## Prevailing Wage Clock

ETA-9089 must be filed while **Prevailing Wage Determination is valid**



## Posted Notice Clock

ETA-9089 must be filed **no less than 30 and no more than 180 days** after posting period started



## H-1B Eligibility Clock

ETA-9089 must be filed before the end of **5<sup>th</sup> year of H-1B time** to preserve H-1B eligibility



# FILING THE ETA-9089 LABOR CERTIFICATION

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- Filing the labor certification **does not grant any immigration benefit.**
- The **“priority date”** is the day ISO files the ETA9089 with the Department of Labor (DOL).
- DOL may take **2-12 months** to approve the labor certification.
- They may decide to **audit** it, which may further delay processing times and require additional documentation from the unit.

# STEP 3: I-140 IMMIGRANT PETITION

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Once labor certification is certified, ISO files the I-140 petition with USCIS to prove faculty member is eligible for an immigrant visa.

ISO will gather the following from the unit:

- Filing fee check(s) for \$700 (and \$2500 Premium Processing)
- Employer declaration confirming conditions of labor certification are met

The I-140 must

- be filed within 6-month validity of labor certification
- include documentation of foreign national's qualifications

# FILING THE IMMIGRANT PETITION

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Filing the immigrant petition **does not grant any immigration benefit to the faculty member**, although it may make a spouse eligible for an employment authorization card (H-4 EAD).

Immigrant petition:

- May take **2-12 months** for USCIS to adjudicate
- Can be **premium processed** for \$2500, which reduces USCIS processing time to  $\leq 15$  days
- May receive a **Request for Evidence** (RFE), which may further delay processing times and require additional documentation from unit or faculty member.

# STEP 4: I-485

## APPLICATION TO ADJUST STATUS

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ISO can provide basic information, but cannot prepare or file this application. The faculty member may receive help from outside immigration counsel at this stage.

Application requires:

- \$1140 filing fee + \$85 biometrics fee
- A medical exam by a “civil surgeon”
- A residential and employment history for the last five years
- Copies of immigration and legal documents
- Fingerprinting by USCIS
- An FBI background check

# BENEFITS OF APPLYING FOR ADJUSTMENT

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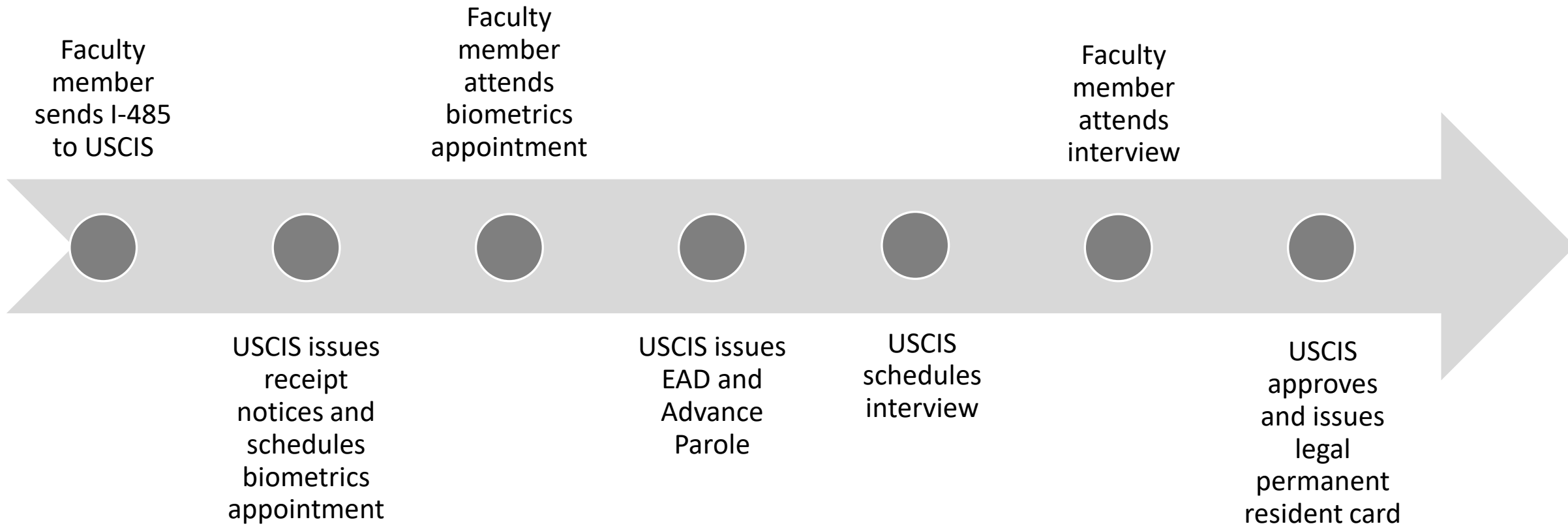
Application for adjustment of status makes faculty member eligible to apply for EAD and “advance parole” travel authorization.

If filed with I-485 application, these applications are **free** and grant independent employment and travel authorization while the I-485 is pending.



# I-485 PROCESS

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QUESTIONS?

# EB-1B OUTSTANDING RESEARCHERS & PROFESSORS





# OUTSTANDING RESEARCHER/PROFESSOR

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- Also called “EB-1B” or “EB-1-2”
- For researchers or professors with outstanding records of research or teaching and **sustained international recognition** in their field
- Does not require labor certification but does require I-140 petition

UW sponsors professorial faculty for EB-1B **by exception only** and after rigorous pre-review

- ISO fee: \$124/hour charged to units
- Cases routinely cost over \$6000, not including USCIS filing fees of \$3200

**WE UNDERSTAND THAT ALL OF YOUR  
FACULTY MEMBERS ARE OUTSTANDING**

But most will not be outstanding  
enough to get an EB-1B petition approved.

# EB-1B EVIDENTIARY CRITERIA

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Candidates must prove **at least two** of the following to USCIS:

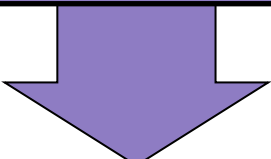
- ☐ Authorship of **scholarly books or articles** in the field
- ☐ Participation as a **judge of the work of others** in the field
- ☐ **Original scientific or scholarly research contributions** in the field
- ☐ **Major prizes or awards** for outstanding achievement
- ☐ **Membership** in associations that require demonstrated outstanding achievement
- ☐ **Published material** in professional publications by others about the faculty member's work in the academic field

...plus **three years of teaching** or research experience.

# TWO-STEP EB-1B ANALYSIS

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USCIS determines if the faculty member meets at least two of the evidentiary criteria



If they do, USCIS determines if the evidence proves the faculty member is outstanding and has received **“sustained international recognition”** in their field

Most candidates can meet the evidentiary criteria requirement, but do not meet the overall **“sustained international recognition”** requirement

# TROUBLE- SHOOTING



# WHEN RECRUITMENTS GO WRONG

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Recruitment issues that can make us unable to sponsor:

- Ad wasn't posted for at least 30 days in print professional journal or *The Chronicle of Higher Education*
- Externally-posted ad didn't list all requirements and duties in Interfolio
- Faculty member didn't meet the exact minimum requirements of the recruitment at the time of hire, or wasn't the most qualified candidate
- Labor certification wasn't filed within 18 months of selection
- Immigrant petition wasn't filed before the labor certification expires

# OVERCOMING RECRUITMENT PROBLEMS

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- If recruitment is still open, **fix it!**
- If recruitment closed, contact your ISO advisor
- ISO will work with OAP to identify possible solutions

# PRIORITY DATE DELAYS, OR THE “VISA BACKLOG”

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“Priority date” from the labor certification establishes the faculty member’s **place in line** for permanent residence.

Depending on country of origin, they may have a long wait, a brief wait, or no wait at all before they can file the I-485.

In particular, Indian and Chinese nationals may wait **3-10 years or longer** before they can finish the process. They should check the [Department of State’s Visa Bulletin](#) regularly to find their turn.



# GETTING AROUND BACKLOGS

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If a faculty member is subject to the visa backlog, they may have options to bypass it if they can:

1. Change “preference category” by filing a new immigrant petition
2. Apply for permanent residence on a different basis: family (e.g. marriage to a U.S. citizen), asylum, etc.

Both of these strategies will require at least a new petition to USCIS, if not more.

Remember: If the labor certification is filed on time, UW faculty members are eligible for **indefinite “AC-21” extensions of their H-1B** until the green card is approved.

# INELIGIBILITY FOR PERMANENT RESIDENCE

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Certain things can make your faculty member **ineligible** for a green card:

- Criminal history
- Membership in totalitarian groups
- Communicable diseases
- Gaps in immigration status
- 212(e) two-year home residence requirement
- Etc. etc.

If your faculty member has any of these problems, they should consult an immigration attorney **before filing the I-485**.



# INCOMPATIBILITY WITH PERMANENT RESIDENCE

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F, J, TN, E-3, and O visas all require “nonimmigrant intent”, which may be violated by applying for a permanent residence.

**Filing an I-485 may affect their ability to travel and return to the U.S. on their nonimmigrant visa.**

If your faculty member is in any of these statuses, they should consult an immigration attorney **before starting the permanent residence process.**

# PRESERVING PERMANENT RESIDENCE

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Certain events can result in revocation of permanent residence, and even **deportation**:

- Criminal issues
- Visa fraud
- Substantial absence from the U.S.
- Failure to renew green card in time



If your faculty member has any of these problems, they should consult an immigration attorney **before applying to extend their permanent residence card or applying for U.S. citizenship.**

QUESTIONS?

# QUESTIONS AND ANSWERS

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Q: To show that a candidate meets the requirements, what would that documentation look like?

A: PhD diploma and transcript; anything else would depend on the requirements for the position. Examples could include copies of published research, letters from prior employers confirming any experience requirements, licenses, etc. The ISO advisor will reach out to discuss this with you when we start working on the case.

# QUESTIONS AND ANSWERS

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Q: For Step 4 (Form I-485), is the filing fee paid by the applicant or can the department pay it?

A: Normally the applicant pays it, but the unit can pay if they choose.

Q: Why are clinical faculty eligible for green card sponsorship only if they are on the dental pathway?

A: It is related to the permanence of those positions. As far as we know, dental pathway clinical professorial positions are more permanent than those in the School of Medicine.

# QUESTIONS AND ANSWERS

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Q: As time is of the essence with these positions, and recruitment might not end with ample time for the process, when is the earliest that units should reach out to ISO? Only after an offer has been extended?

A: Normally it starts with the H visa request, but if you have a final candidate who will need sponsorship, you can reach out to ISO ahead of time, especially if the start date is far away.



# QUESTIONS AND ANSWERS

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Q: Does EB-1B authorship criteria need to be first-authored?

A: First-authored is ideal. If we can make an argument that they are a senior author, that can also work. Even if first-authored, they need to be well-received in the field, well-cited, etc. ISO can review a scholar's publication history to assess whether the scholar may be a good candidate for EB-1B sponsorship.

# QUESTIONS AND ANSWERS

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Q: How would ISO determine if another candidate was more qualified than the candidate who received the offer?

A: ISO will not second-guess the unit's determination of who is the best candidate. However, if the candidate doesn't meet all requirements listed in the ad, they cannot be the most qualified candidate and are ineligible for permanent residence sponsorship.

# ADDITIONAL RESOURCES:

- [Permanent Residence Landing Page](#)
- [How to Sponsor for Permanent Residence](#)
- [Creating Ads for Permanent Residence Sponsorship Eligible Positions](#)
- [LPR Process Handout](#)

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