TODAY’S TOPICS

● Introduction to Green Cards
  ○ Family-based
  ○ Employment-based
  ○ Other bases

● The UW Process
  ○ Recruitment and selection
  ○ Step 1: Labor Certification
  ○ Step 2: Immigrant Petition
  ○ Step 3: Adjustment of Status

● Outstanding Researchers & Professors

● Troubleshooting
  ○ When to re-recruit
  ○ Priority date delays
  ○ Ineligibility for green card
  ○ Incompatibility with green card
  ○ Preserving permanent residence

● Q&A
INTRODUCTION
TO GREEN CARDS
WHAT IS A GREEN CARD?

A green card, a.k.a. legal permanent residence, is (practically) unconditional permission to reside and work in the United States. It usually requires a petition to USCIS for an “immigrant visa number”.
FAMILY-BASED GREEN CARDS

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 green cards fairly quickly, while other relatives may have substantial wait times.
EMPLOYMENT-BASED GREEN CARDS

Can be sponsored by employer:
- 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

Or self-sponsored by employee:
- EB-1 Extraordinary Ability
- EB-2 National Interest Waiver
- EB-5 Immigrant Investor
OTHER GREEN CARDS

Other ways in:

- Refugees/Asylees
- Diversity Visa Lottery
- Survivors of domestic abuse, trafficking, or other crime
- Special Immigrant Juveniles
- Cuban emigres
SO MANY 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”
- Admits people entering the US on immigrant visas

Federal Bureau of Investigation
- Runs background checks for green cards
DO I HAVE TO REMEMBER ALL OF THAT STUFF?

No! If someone presents you with an unexpired green card, that person is **eligible for employment**. You don’t need to know the basis for their residency or advise them on its ramifications.
THE UW PROCESS
All UW-sponsored green cards 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)
- **Senior Lecturers and Lecturers**
  (with competitive recruitment only)

Any of these must be a **full-time, permanent position with some teaching duties** to be eligible for green card sponsorship.
FOUR STEPS TO A GREEN CARD

There are **four steps** to sponsorship for a green card at UW:

- **Recruitment**: The recruitment, which occurs at the unit level, may be the most important step of this process!

- **ETA-9089 Labor Certification**

- **I-140 Immigrant Petition for Alien Worker**

- **I-485 Application to Adjust Status**
STEP 1: RECRUITMENT AND SELECTION

In order to sponsor a position for a green card, the initial recruitment must meet the following requirements:

• Ad must:
  • Be published in a professional print journal or the Chronicle of Higher Education online for at least thirty days
  • Must require an advanced degree (master’s or doctorate) in a related field
  • Include 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
ADVERTISEMET TIPS

There are ways to make the green card process easier even at this stage!

- List all requirements clearly and precisely
- List all acceptable U.S. degree(s) and include “or foreign equivalent”
- Avoid “preferences” and excessive requirements

Remember that you will have to document that the candidate meets every single requirement and preference.

See Creating Ads for Permanent Residence Sponsorship Eligible Positions for further guidance.
STEP 2: ETA-9089 LABOR CERTIFICATION

ISO files this document with the Department of Labor to prove that we have a position subject to a “labor shortage” and a qualifying foreign national applicant. To file, we need the following from you:

a. documentation that the foreign national meets all requirements of the position (e.g. degree, certificates, publications, letters confirming experience);

b. a recruitment report describing the recruitment process and confirming that the foreign national was the most qualified applicant;

c. proof that the position was appropriately advertised and notice given to US workers; and

d. all information necessary for the ETA-9089.
THE CLOCKS ARE TICKING AT STEP 2...

Recruitment Clock
ETA-9089 must be filed **within 18 months** of date of 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 employee’s 5th year of H-1B time to preserve H-1B eligibility
FILING THE LABOR CERTIFICATION

The “priority date” is the day that ISO files the Labor Certification for that scholar with the Department of Labor. Filing the labor certification does not grant any immigration benefit to the scholar.

The DOL may take anywhere from 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

ISO files this petition with USCIS to prove that we have an employee who qualifies for an “immigrant visa” based on an approved labor certification.

- Must be filed within validity of labor certification (i.e. within six months of approval)
- Must include documentation of foreign national’s qualifications
- Requires $700 filing fee to USCIS
- Can be premium processed within 15 days for an additional $1440 fee
FILING THE IMMIGRANT PETITION

Filing the immigrant petition, in and of itself, does not grant any immigration benefit to the scholar, although it may make their spouse eligible for an employment authorization card (“H-4 EAD”).

USCIS may take anywhere from 2-12 months to approve the immigrant petition. They may issue a Request for Evidence (“RFE”), which may further delay processing times and require additional documentation from the unit or the scholar.
STEP 4: I-485 APPLICATION TO ADJUST STATUS

This is the “green card application”. The foreign national must file this, but may have help from outside immigration counsel.

This 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

ISO can provide basic information on this application, but cannot give individualized legal advice.
The application for adjustment of status makes the scholar eligible to apply for an **Employment Authorization Card** ("EAD") and “advance parole” travel authorization.

If filed with the I-485 application itself, these applications are **free** and grant independent employment and travel authorization to the scholar.
OUTSTANDING RESEARCHERS & PROFESSORS
OUTSTANDING RESEARCHER/PROFESSOR

This category (also called “EB-1B” or “EB-1-2”) is for researchers or professors who have an outstanding record of research and **sustained international recognition** in their field. It does not require a labor certification but does require an I-140 petition.

The UW sponsors employees for EB-1B **by exception only** and after a rigorous pre-review. ISO charges an fee of $55/hour for work on these cases to the units, and cases routinely cost over $2000, not including USCIS filing fees.
YES, WE UNDERSTAND THAT ALL OF YOUR FACULTY MEMBERS ARE OUTSTANDING

But most of them will not be outstanding enough to get an EB-1B petition approved.
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 their members to demonstrate outstanding achievement
- Published material in professional publications written by others about the alien's work in the academic field

...plus **three years of teaching** or research experience.
USCIS determines whether the scholar meets at least two of the evidentiary criteria. If they do, USCIS determines whether the evidence proves that the scholar 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 requirement for "sustained international recognition".
TROUBLE-SHOOTING

YOU'RE TEARING ME APART USA
LABOR CERTIFICATIONS: WHEN TO RE-RECRUIT

ISO will try to foresee difficulties in the green card process and avoid them proactively. However, there are some issues that can only be fixed by a new recruitment:

• If the ad didn’t run in a professional journal or the Chronicle for at least 30 days
• If the labor certification wasn’t filed within 18 months of selection
• If the foreign national didn’t meet the exact minimum requirements of the recruitment at the time of hire, or wasn’t the most qualified candidate
• If the immigrant petition isn’t filed before the labor certification expires

The foreign national will have to apply for the new recruitment and be the most qualified applicant in the pool.
PRIORITY DATE DELAYS, OR THE “VISA BACKLOG”

The “priority date” from the labor certification establishes the foreign national’s place in line for a green card. 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 going through the UW process may wait 5-10 years or longer before it’s their turn to apply for a green card. They should check the Department of State’s Visa Bulletin regularly to see when their turn will come.
GETTING AROUND BACKLOGS

If a UW employee is subject to the visa backlog, they may have options to get around it if they can:

1. Change “preference category” by filing a new immigrant petition
2. Get a green card on one of the bases listed earlier: 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: as long as the labor certification is filed on time, UW employees will be eligible for indefinite “AC-21” extensions of their H-1B until their green card has been approved.
INELIGIBILITY FOR GREEN CARD

Certain things can make your scholar 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 scholar has any of these problems, they should consult an immigration attorney before filing the I-485.
INCOMPATIBILITY WITH GREEN CARD

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

Filing an I-485 may end their legal status or make them deportable.

If your scholar is in any of these statuses, they should consult an immigration attorney before starting the green card process.
PRESERVING PERMANENT RESIDENCE

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 scholar has any of these problems, they should consult an immigration attorney before applying to renew their green card or applying for U.S. citizenship.
E-mail us at acadvisa@uw.edu

Or check our website at http://ap.washington.edu/ahr/visas/permanent-residency/