

What Faculty, Scholars, Researchers, Students (and Their Institutions) Need to Know Before Starting the Employment Based Green Card Process

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Fredrikson

The logo for Fredrikson, featuring the name in a bold, black, sans-serif font. A red horizontal bar is positioned below the 'F', extending to the right and ending under the 'n'.

Introduction

- Topics Presented
 - Brief overview of green card options
 - Considerations that go into the planning process
 - What can you do now to start building a potentially successful case
 - What can institutions do to support their foreign faculty, scholars, researchers and students if they want to remain in the US permanently
 - Questions

Fundamentals of Employment-Based Permanent Residence

Employer-Sponsored

Self-Sponsored

Employer-Sponsored Pathways

- Labor Certification Application (PERM)
- Outstanding Professor & Researcher (EB-1/2)

Self-Sponsored Pathways

- Individual of Extraordinary Ability (EB-1A)
- National Interest Waiver (EB-2)

Don't Expect These Options to Go Away... Do Expect Them to Get Harder...

- Anticipate
 - PERM audits
 - Wage level eliminations or increased wages
 - Increased RFEs, NOIDs, Denials
 - Longer processing times for PERMs, EB-1A/B, EB-2 NIW
 - Employers may in some cases be inclined to take more of a wait and see what happens with the administration approach or may sponsor less
- Start planning the process early!

Considerations

- Ask yourself: why do I want a green card?
 - Indefinite ability to remain and work in US
 - Path to citizenship – U.S. citizenship required to vote
 - Stability
 - Job prospects in US
 - Work authorization for spouse
 - Eligibility for funding
 - Ease of international travel

Considerations

- But permanent residency may not be for everyone
 - Expensive
 - Long process
 - You can lose it once you gain it
- Pay attention to country of birth & wait times
- Importance of maintenance of nonimmigrant status, ideally until green card is issued

Strategy Considerations When Applying in the US

Valid nonimmigrant status for the duration of processing

Valid status required at the time you file the I-485

Valid status recommended until you receive the green card – important safety net!

Developing Strategy

- Don't forget to factor specific NIV into strategy
 - Each status has different rules & requirements
 - Examples:
 - Temporary intent for J-1 & F-1;
 - 2-year foreign residency requirement;
 - Durational limits

Developing Strategy

- **Strategy Considerations for Applying at US Embassy Abroad**
 - **Process:** I-140 Approval, National Visa Center, Interview at US Embassy
 - **Timing:** Adds 6-8 (or more?) months

What Can You Do Now To Start Building Successful Cases?

- Who will be your new audience “the new USCIS examiner”
- Changes to USCIS policy manual
- Changes to deference
- Buy American, Hire American

What Can You Do Now To Start Building Successful Cases?

- How to adapt to an “American First” mentality
 - Type of research –fields of specialization
 - What US benefits are now important to the adjudicator in this environment
 - How to position the foreign national and its institution as necessary to the betterment of the US
 - Discuss where possible US job growth

What Can You Do Now To Start Building Successful Cases?

- Discuss how to avoid losing such immense talent to the global competition
- US grants, patents, US funding, collaborations, original nature and uniqueness of what you do
- Standard will be higher – seek opportunities to advance your profile, department, institution, conferences, journal reviews. Activities in professional organizations
- Prepare to explain what skills, experience, and accomplishments you bring that are not readily found in the US and how it advances the US interest – even in EB1A, EB1B cases

Requests for Evidence/Notice of Intent to Deny

- Likely will see an increase in RFE/NOID by USCIS
 - Don't dismay. Petitions can and will still be approved.
 - Address each area noted by USCIS with substantive responses
 - Focus on the evidence and the policy manual, and how the evidence presented meets each requirement
 - Remember, there is no set number of citations required, no set number of publications. However, don't hide weak facts – expect the examiner to see these and be prepared to address them.
 - Do be realistic, one may need to file a PERM or NIW and wait to build a profile for an EB1 petition

What Can Institutions Do To Support Their Foreign Faculty, Scholars, Researchers and Students If They Want To Remain In the US Permanently?

- Have a clear policy on how decisions regarding green card sponsorship are made. If you only sponsor faculty, be clear about why. If there is an exception process, make sure that your criteria are communicated and make sense.

What Can Institutions Do To Support Their Foreign Faculty, Scholars, Researchers and Students If They Want To Remain In the US Permanently?

- How CU Denver prepared during the last administration
 - Communicated with our constituents to ensure that they understood that the green card process was going to be more difficult, take longer, and cost more and that we would need to be more discerning in the cases we could support
 - Moved from handling cases in-house to exclusively using outside immigration counsel to prepare and file employment-based permanent residency cases

What Did You Learn From the Changes From the Administration?

- We learned how reliant we were on our ability to hire and retain international employees, especially in some specialty areas where there are few U.S. workers, e.g., Pathology
- We learned that the administration had little to no “chilling effect” on the number of permanent residency cases
- If anything, an administration less friendly to immigration heightened interest by both employees and hiring units in obtaining permanent residency for international employees

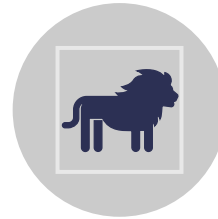
How Did Communication Happen With Faculty, Students, Administration?

- More frequent updates
- More frequent meetings with departments to review the situations of international faculty and staff
- More “strategy” questions from all constituents and more immigration pathway questions from students/younger researchers

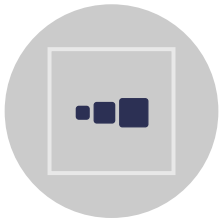
Plans For This Year



Stay up-to-date and timely share information in as straightforward a way possible



Since we don't have a crystal ball, we have to be clear about what we know and what we don't know



Managing expectations at the beginning, middle, and end of the process. Plan for contingencies.



Message sent to campus partners

What Can You Do Now?

- We are committed to successfully navigating the next four years together. With your help, we will continue to attract world-class talent and support the immigration needs of our current international faculty, researchers, and staff.
- There are several actions that you can take to assist us:
 - If you are aware of employees who are in immigration categories that may end soon and/or that may not be renewed, to include Deferred Action for Childhood Arrivals (DACA), Humanitarian Parole, Temporary Protected Status (TPS), and F-1 Optional Practical Training (OPT), please reach out to Employment-Based.Immigration@ucdenver.edu as soon as possible to explore whether a change of status to H-1B or other employment-based visa status might be possible.
 - Advise ISSS **in advance** of changes in the terms and conditions of employment for anyone in H-1B status. It is almost impossible to remain fully compliant with the requirements of this highly regulated visa status unless we know ahead of time of any changes that could be in violation of regulatory requirements or require updates to the Labor Condition Application (LCA) or the H-1B petition.
 - Please request immigration services as far in advance as possible and be prepared to use premium processing for most filings. Advanced planning and premium processing services are tools that we can use to navigate uncertain immigration processes and reduce long processing times.

Questions?

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