



H-1B Visa Workshop - 2017

Presented by the Office of International Services

What is an H-1B Visa?

- ▶ H-1B visa status is for a professional employee in a specialty occupation for whom an employer, after providing notice to other employees, has filed a certification with the U.S. Department of labor attesting to paying the higher of the actual or prevailing wage, providing working conditions similar to other workers in the area, providing notice to other employees, and that there is no strike or lockout for similar employees.
- ▶ What does all this mean?
 - ▶ Employment visa
 - ▶ Ultimate goal is to protect U.S. workers – ensure paying the prevailing wage with similar working conditions
 - ▶ Another goal is to protect foreign nationals
 - ▶ University is the petitioner – request should come from department



H-1B Eligibility

- ▶ The H-1B is a nonimmigrant classification used by an employer offering a position in a specialty occupation to an employee who will be temporarily employed (up to 6 years, total).
- ▶ A *specialty occupation* requires theoretical and practical application of a body of specialized knowledge, consistent with a profession requiring a minimum of a bachelor's degree or its equivalent.
- ▶ The H-1B employee must possess the stated minimum requirements for the position.



H-1B Eligibility

At UT Health San Antonio, we sponsor H-1Bs for the following specialized occupations:

- ▶ Assistant, Associate, or Professors
- ▶ Professor, Associate, Assistant, or Instructor/Clinical
- ▶ Professor, Associate, Assistant, or Instructor/Research
- ▶ Lecturers/Instructors
- ▶ Research Scientists
- ▶ Postdoctoral Fellows
- ▶ Other Professional Exempt Staff where a specific degree is minimum requirement
- ▶ We do not sponsor GME Residents and Fellows (only in rare circumstances)

HOP [Policy 3.1.1](#) Academic Titles



H-1B Eligibility

If a foreign national has spent any time in J-1 or J-2 status in U.S., we need to verify whether or not s/he was subject to 212(e), aka, the two-year home residency requirement.

- ▶ There will be a notation on the J visa as well as on the DS-2019 used to apply for the initial J visa.
- ▶ If the foreign national was subject, then ISSS will need
 - ▶ Evidence that scholar spent two years in home country after J time in US;
 - ▶ Letter of No Objection from the U.S. Department of State; or
 - ▶ USCIS Waiver Approval Notice.



H-1B Eligibility for Physicians

- ▶ Foreign Medical Graduates involved in patient care must have USMLE Parts 1, 2, and 3 and ECFMG Certificate OR a U.S. medical degree.
- ▶ Alternatively, we can evaluate the individual's eligibility to be considered an H-1B Physician of National or International Renown.
- ▶ If ever sponsored by ECFMG as a J-1 Physician, we must file for a waiver of the 2-year home residency requirement.
- ▶ Must have Texas Medical License BEFORE we can file H-1B petition.



H-1B Advantages

- ▶ “Dual intent” category with no requirement that H-1B visa holder maintain a residence in home country.
- ▶ H-1B visas are sometimes easier to obtain because immigrant intent is not an issue.
- ▶ If employee is already in H-1B status and is “porting” to UT Health San Antonio from another employer, s/he can begin working as soon as our is petition filed.
- ▶ An individual can generally hold H-1B status for maximum of 6 years.



H-1B Disadvantages

- ▶ Employer must pay salary that meets or exceeds the prevailing wage as determined by the U.S. Department of Labor.
- ▶ Filing fees can add up quickly, especially if timing requires the use of premium processing.
- ▶ If employee is terminated for any reason before the requested H-1B expiration date, employer must pay cost of transportation to employee's home country.
- ▶ H-4 dependents cannot work, unless the H-1B principal has applied for or is the beneficiary of employment-based permanent residency, and has reached a certain stage in that process.



STEM OPT vs. H-1B

- ▶ OPT is one-year of work authorization for individuals in F-1 status after they graduate.
- ▶ STEM OPT is a two-year extension of this work authorization for those students who completed a degree in the STEM fields.
- ▶ Total of 3 years of work authorization with no cost to the employer!
- ▶ Student pays fees (\$410) and obtains employment authorization document. Mostly a freebie!
- ▶ Flexibility for both student and employer.
- ▶ Employer required to complete with student Form I-983 formal training plan.
- ▶ Rare exceptions where more advantageous to move directly to H-1B. Contact OIS for more information.
- ▶ Comparison of OPT, STEM OPT, and H-1B handout.



Today's Agenda

Overview of the
H-1B process

Documents
required

LCA posting
process

Questions/
Feedback



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Department gathers & submits a complete H-1B packet to the Office of International Services (OIS). *(Forms can be found at www.uthscsa.edu/ois)*




OIS reviews packet. If documents are missing or additional information is needed OIS will contact department.
OIS Processing time: 5 to 10 business days



Once there is a complete H-1B packet, a Prevailing Wage request is submitted to the Department of Labor (DOL).
DOL Processing time: 13 to 15 weeks.



When the prevailing wage is received, a Labor Condition application is submitted to the DOL.
DOL Processing time: 7 to 10 days.



When the LCA is certified, OIS prepares and submits the H 1B request to the U.S. Citizenship and Immigration Service (USCIS). **USCIS Processing time: 6 to 9 months for regular processing or 15 days for premium processing.**

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H-1B Visa Petition Checklist

Make checks payable to:
 U.S. Department of Homeland Security
 USCIS – California Service Center
 24000 Avila Road, 2nd Floor, Room 2312
 Laguna Niguel, CA 92677

New requirements:
 Copy of offer letter
 and copy of official
 position
 description

ITEMS NEEDED FROM THE HIRING DEPARTMENT

- H-1B Hiring Department Questionnaire
- Actual Wage Memorandum
- H-1B support letter (Template found at www.uthscsa.edu/ois)
- Copy of letter of offer
- Copy of the official position description for this position, including the minimum and preferred requirements or a copy of the position as listed in UT Health Careers
- Copy of email message from HR to department approving hire (for initial H-1B for classified staff A & P petitions for classified staff and A & P positions only)
- Export Controls Certification Form
- A check for \$460 government filing fee
- A check for \$500 government fraud detection fee (Not required for current UT Health Science Center H-1B employees)
- A check for \$1,225 government premium processing fee (For Premium Processing only)
- Inter-Departmental Transfer Voucher (IDT) for \$750 payable to the Office of International Services found via the following link: http://www.uthscsa.edu/business/FORMS/people_soft_idt_-_inter-department_transfer_voucher.dot

**Please note that the IDT will be processed by OIS when the prevailing wage request is submitted to the U.S. Department of Labor. The fee is non-refundable even if the application is withdrawn before it is sent to USCIS for approval.*

ITEMS NEEDED FROM THE H-1B APPLICANT

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- Copy of applicant's current Curriculum Vitae (CV) or resume
- Copies of professional degree diplomas/certificates for all degrees (U.S. and foreign) and academic transcripts if the field of study is not listed on diploma/certificate
- Copy of credential evaluation for foreign degree that qualifies applicant for the position (See www.naces.org or www.aice-eval.org for evaluators)
- Copies of passport page(s) showing expiration date and biographic information
- Copies of current and previous visa stamp(s)
- Copy of most recent I-94 Arrival Record (can be downloaded at <https://i94.cbp.dhs.gov/>) or if last arrival to the U.S. prior to April 2013 copy of the front and back of I-94 card
- Copies of all prior I-20 forms if previously held F status
- Copies of all prior DS-2019 forms if previously held J status
- Copy of the Form I-612 Waiver Approval Notice (if previously held J status and subject to the two-year home residency requirement)
- Copies of all prior Form I-797 Approval Notices if previously held H, L, O or TN visa status
- Pay stubs from last two months (for H-1B transfers and H-1B extensions only)
- Copy of any current or previous Employment Authorization Card (EAD)
- Receipt and/or approval notices for any Form I-140 and/or Form I-485 applications
- Employment verification letter from current employer (for H-1B transfers only)
- Texas Medical/Dental/Nursing license (if position involves any patient contact)
- if applicant is a physician who will participate in a clinical position provide:***
- Evidence of passing all 3 steps of U.S. Medical Licensing Examination (USMLE)
- ECFMG Certificate
- if applicant will request H-4 dependent status for family members (spouse or children) currently in the U.S. provide:***
- Form I-539 with government filing fee of \$370 (Form found at <https://www.uscis.gov/i-539>)
- Copies of pages of family members' passport showing expiration date and biographic information
- Copies of current and previous visa stamp(s) of family members'
- Copies of most recent I-94 Arrival Record or I-94 card of family members'
- Copies of other immigration documents if applicable (For example: DS-2019 form, I-20 form, EAD card, I-797 Approval Notice, etc.)
- Copy of Marriage certificate for spouse (If document is not in English, provide certified translation.)
- Copy of Birth certificate(s) for children (If document is not in English, provide certified translation.)

**The translator must certify that s/he is competent to translate and that the translation is accurate. The certification form should include the certifier's name, signature, address, and date of certification.*

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Tips for submitting an H-1B request

- ▶ Submit a complete packet with the checklist on top.
- ▶ Submit as early as possible
- ▶ Make sure that all forms/letters are signed and dated.
- ▶ Check that all copies of documents submitted are clear and legible.



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H-1B Hiring Department Questionnaire

Type of petition: New Extension Amendment Transfer

Start date requested: _____ End date requested: _____

Applicant's name (Last, First, Middle): _____

Department/Division: _____

Name and title of supervisor: _____

Name of department contact: _____

E-mail and phone number of department contact: _____

The Office of International Services will mail the H-1B petition to the USCIS processing center, and to the H-1B applicant (if necessary) via eShip Global. Please provide the following information to bill your department for the cost of mailing:

Username: _____ Project ID (PID): _____ Dept. ID: _____

Part 1. Information about Position

Position title: _____ HR Job Code: _____

Does this position supervise the work of other employees: Yes No

If yes, number of employees applicant will supervise: _____ Level of employees supervised: Subordinate Peer

Job duties – Provide a description of duties to be performed with as much specificity as possible (attach a separate sheet of paper if necessary)

Will travel be required in order to perform duties? Yes No *If yes, please explain* _____

Hours employee will work per week: _____ Hourly work schedule: A.M. _____ P.M. _____

Salary: \$ _____ per year per month per hour

Minimum U.S. diploma/degree required: Bachelor's Master's Doctorate Other: _____

Indicate the major(s) and/or field(s) of study required _____

Is a second U.S. diploma/degree required? Yes No *If yes, please specify* _____

Is training for the job opportunity required? Yes No *If yes, number of months required* _____

Indicate the field(s)/name(s) of training required _____

- Overview of the type of petition, applicant, and the sponsoring department
- Gather information about the position to submit a prevailing wage request
- Inform the sponsoring department of the conditions for sponsoring an H-1B visa and obtain acknowledgement that the department agrees with the rules of the H-1B visa

Types of H-1B Filings

▶ **“New”**

- ▶ Beneficiary is overseas and will enter the U.S. in H-1B status for the first time ever, or after being outside the U.S. for 365 days or more.
- ▶ Beneficiary is changing to H-1B status from another nonimmigrant status (F-1 or J-1, for example).

▶ **“Extend”**

- ▶ Used to request an extension of Beneficiary’s H-1B status, up to maximum eligibility.
- ▶ May be requested for up to 3 years at a time.

▶ **“Amend”**

- ▶ Used to report a “material” change in the terms and conditions of a Beneficiary’s employment.

▶ **“Transfer” or “Change of Employer”**

- ▶ Beneficiary is already in the U.S. in H-1B status sponsored by another employer.
 - ▶ Also referred to as “porting.”
-



Amending an H-1B petition

- ▶ An H petition must be amended “to reflect any material changes in the terms and conditions of employment or training or the alien’s eligibility as specified in the original approved petition.” 8 C.F.R. § 214.2(h)(2)(i)(E).
- ▶ Any required amendment must be filed BEFORE the intended change goes into effect.
- ▶ Material changes requiring an H-1B Amending include:
 - ▶ Change of job title;
 - ▶ Significant change in job duties, including being assigned significant additional duties or having significant duties taken away;
 - ▶ Move from part-time to full-time, or vice versa; and
 - ▶ Change in job location.



Prevailing Wage Determinations

- ▶ Currently submitted to the National Prevailing Wage Center (NPWC) and taking approximately 14 weeks
 - ▶ Using data gathered by Bureau of Labor Statistics (does not always accurately reflect prevailing wage)
- ▶ Please be very specific about what the requirements and duties are for the position, as we use these to request the PWD:
 - ▶ Supervision only includes those with hiring/firing authority
 - ▶ Minimum requirements for the position, not preferred requirements or what the foreign national possesses
 - ▶ Include all duties, such as teaching, research, service, and clinical care and be specific



No Benching

- ▶ We must pay H-1B employees at least the salary indicated in the Labor Condition Application (LCA) and on Form I-129 of the H-1B petition **at all times, no matter what.**
- ▶ We must obtain a new certified LCA from DOL and file an amended H-1B petition to inform USCIS if an H-1B employee's hours or salary must be reduced, before the change goes into effect.



Items needed from the hiring department

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Actual Wage Memorandum

The purpose of this statement is to provide the criteria used by the University of Texas Health Science Center at San Antonio to differentiate with regard to pay among employees who are in the same occupation with similar experience and qualifications.

Position Title: _____

Hiring Department/Unit: _____

Salary Paid to H-1B Nonimmigrant Employee: _____

Is the position unique, in that there are no other employees in the department with the same or similar job title and basic duties? Yes No If yes, please provide specific, employment-related reasons why the position is unique and therefore the actual wage rate is that paid to the H-1B employee:

Presently, there are _____ individuals with similar duties and/or responsibilities in the department.

The range of the salaries for the employees holding this position is from \$ _____ to _____ per year.

In determining the actual wage for the above position at the University of Texas Health Science Center at San Antonio, the following factors, which conform to recognized principles of salary determination in the field of higher education and research, are taken into account:

1. Relevant experience, including the length of any such employment, the type of employment, the depth and breadth of employment and any special achievements;
2. Educational background, including the level of education obtained, notable educational accomplishments, and/or reputation of the degree granting institution;
3. Job responsibility and function, including the nature of duties and responsibilities to be performed and the degree of supervision, if any, to be exercised;
4. Possession of specialized knowledge, skills or training;
5. Other indicators of performance and ability, including job references, performance evaluations, awards, achievements and/or accomplishments.
6. We also may consider other legitimate business factors such as the current market for individuals with the applicant's experiences and qualifications. The consideration of such factors conforms to recognized principles of educational hiring practices.

Salaries of employees may be adjusted on an annual basis, dependent upon individual performance and budget considerations. We apply the same methodology to all U.S. and H-1B visa employees in this classification when determining the actual wage based upon the referenced criterion.

Name of person who prepared application: _____

Signature: _____ Date: _____

Name of department chair: _____

Signature: _____ Date: _____

Actual Wage Memorandum

- Provide the criteria used by the UT Health Science Center at San Antonio to differentiate with regard to pay among employees who are in the same occupation with similar experience and qualifications
- Do not list names and salaries of employees

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H-1B Support Letter

- **The position offered:** title, job duties, patient contact/no patient contact/incidental contact, educational, experience, and licensure requirements, and field of knowledge.
- **Applicant's qualifications for the position:** relevant degree, licenses or certificates, and experience.
- **Terms of employment:** title, salary, dates of employment, cost of return transportation statement.



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Export Controls Verification Form

The U.S. Citizenship and Immigration Services (USCIS) on the Form I-129 “Petition for Nonimmigrant Worker” requires review and certification relative to export control technology or technical data being released to the prospective employee.

Office of Sponsored Programs

<http://research.uthscsa.edu/osp/ExportControls.shtml>



Export Controls Verification Form

1. Is the potential employee from the Balkans, Belarus, Burma, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Iran, Iraq, Lebanon, Libya, North Korea, Somalia, Sudan, Syria, Yemen, or Zimbabwe? Yes No
2. Will the potential employee have access to encryption technology? (This does not include commercial encryption software installed on PCs or Laptops) Yes No
3. Will the applicant be involved in a project that:
 - a. Requires approval or prohibits use of foreign citizens on the project? Yes No
 - b. Requires sponsor approval prior to publication or discussion at an open conference? Yes No
 - c. Has a military purpose? (other than health-related) Yes No
 - d. Requires access to confidential information protected under a non-disclosure agreement? Yes No

- ▶ If all questions were answered “no”: the form is signed and submitted to OIS.
 - ▶ If one or more of the questions is answered “yes”: the form is signed and e-mailed to the Office of Sponsored Programs for review at exportcontrol@uthscsa.edu
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- ❑ **A check for \$1,225 government premium processing fee**
- ❑ **Inter-Departmental Transfer Voucher (IDT) for \$750**



Processing fees

- ▶ All H-1B visa requests
 - ▶ \$460 government filing fee
 - ▶ \$750 IDT payable to the Office of International Services
 - ▶ Shipping costs
 - ▶ H-1B petition to USCIS \$7 - \$15
 - ▶ H-1B approval documents to applicant (if needed) \$10 - \$50
- ▶ Additional fees *if applicable*
 - ▶ \$500 government fraud detection fee—required for all new H-1B visa employees to the UT Health Science Center or for a current employee changing status to H-1B from another visa status.
 - ▶ \$1,225 premium processing fee—optional fee for faster processing by USCIS; guaranteed response within 15 days.



Important note about IDT

The department will incur the cost of the \$750 once OIS submits a prevailing wage request to the U.S. Department of Labor.

The fee is non-refundable, even if the department withdraws the H-1B application before the case is completed.



Items needed from the H-1B applicant

- ❑ H-1B Applicant Questionnaire
- ❑ Copy of credentials: CV/resume, diplomas/certificates, credential evaluation for foreign degrees. If clinical position: USMLE results, ECFMG certification, medical/dental/nursing license.
- ❑ Copy of current immigration documents: passport, visa stamp, I-94, I-20/DS-2019/I-797 forms, waiver approval notice, EAD, PR documents, etc...
- ❑ If current employee, copies of last 2 pay statements
- ❑ If transferring H-1B visa status, letter from current employer
- ❑ If requesting H-4 status for dependents *only* in U.S.: Form I-539 and filing fee of \$370, copies of family members' immigration documents, and marriage certificate for spouse/birth certificate for children. (We do not assist with this form, but can provide an email template with general information)



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H-1B APPLICANT QUESTIONNAIRE
 (To be completed by applicant)

Name (Last, First, Middle): _____

Date of Birth (mm/dd/yyyy) _____ Gender: Male Female

Country of Birth _____ Province of Birth _____ City of birth _____

Social Security number (if applicable) _____ A-Number (if applicable) A- _____

Permanent Foreign address: _____

E-mail address _____ Phone number: _____

Indicate city and country of U.S Consulate at which you would apply for an H-1B visa stamp _____

Have you ever held H-1B status? Yes No

Have you ever been denied H-1B classification? Yes No

Are you in exclusion or deportation proceedings? Yes No

Have you ever held J-1 Exchange Visitor or J-2 Dependent status? Yes No

If yes, have you ever been subject to the 2-year home residency requirement? Yes No

Has an immigrant petition for permanent residency (I-140) ever been filed in your behalf? Yes No

If yes to any of the above questions, please explain: _____

List all previous periods of stay in the U.S. in H or L nonimmigrant status below (Attach separate sheet if necessary):

Visa Type	Dates in the U.S. (mm/dd/yyyy to mm/dd/yyyy)

Will any dependents, spouse and/or children under 21, be applying for a change of status to H-4? Yes No

If yes, please complete the information below (Attach separate sheet if necessary):

Name	Relationship to applicant	Birth date (mm/dd/yyyy)	Country of birth

H-1B Applicant Questionnaire

- Obtain information about the applicant and his immigration history to determine H-1B visa status eligibility
- Obtain information about dependents that will accompany the H-1B applicant

COMPLETE BELOW IF CURRENTLY IN THE U.S. IN A NON-IMMIGRANT VISA STATUS

Current Visa Status: _____ Date Status Expires: _____

Date of Last U.S. Entry: _____ I-94 Entry Number: _____

Current U.S. Residential Address: _____

LIST DATES AND DESTINATIONS OF ANY PLANNED TRIPS OUTSIDE OF THE U.S. IN THE NEXT 6 MONTHS

(Attach separate sheet if necessary)

- _____
- _____
- _____

I certify that all information provided in this H-1B Applicant Questionnaire is true and correct.

Name of applicant: _____

Signature: _____ Date: _____



Items needed from the H-1B applicant

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Today's Agenda

Overview of the
H-1B process

Documents
required

LCA posting
process

Questions/
Feedback



Notice of Filing Labor Condition Application

- ▶ The notice will be sent to the department administrator only. HR is not involved in the LCA posting process.
- ▶ Notice of filing Labor Condition Application posting:
 - ▶ 10 consecutive business days (excluding federal holidays)
 - ▶ Posted in **two** conspicuous places at each work location listed on the notice such as bulletin boards, hallways, break rooms, conference rooms, etc...



Notice of Filing Labor Condition Application

- ▶ The day the notice is posted the department administrator must e-mail OIS advisor to confirm the notice has been posted in two locations.
- ▶ When the posting period is complete, the person who posted the notice should indicate the dates and location of posting on the notice in detail, e.g. bulletin board in Rm. 302 of Medical Bldg., 7703 Floyd Curl Drive., San Antonio, TX 78229.
- ▶ Complete and signed noticed should be returned to OIS as soon as possible after the 10 day posting period. Kindly attach a Post-It note to the notice indicating the H-1B applicant's name.



Extensions beyond the 6th year

- ▶ An employer can extend an employee's H-1B status beyond the end of the 6th year of eligibility by “recapturing” time the employee spent outside the United States while in H-1B status.
- ▶ This time outside the United States could have been spent on vacation, at conferences, waiting to obtain a new visa, or for any other reason.
- ▶ If the first step of the employment-based permanent residency process (Labor Certification or I-140) before the end of the 5th year in H-1B status, an extension beyond the 6th year may be filed in 1 year increments.
- ▶ If an I-140 filed on Beneficiary's behalf is approved and no immigrant visa is immediately available, an extension beyond the 6th year may be filed in 3 year increments, until the H-1B visa holder is able to adjust to permanent resident status.



H-1B departure

- ▶ Please let OIS know if an H-1B employee is leaving or has left the University by completing a Confirmation of Departure Form. Otherwise, we could owe back wages.
- ▶ Please also inform OIS if the employee has received his/her green card and update the I-9 accordingly.
- ▶ Treat H-1B employees the same way you would any other employee when making termination decisions. If possible, do try to work with the employee regarding the timing of the termination.
- ▶ If it is necessary to terminate an H-1B employee before the ending validity date of his/her I-797 Approval Notice, the hiring unit is responsible for paying return transportation to the employee's place of last permanent residence.



Fraud Detection and National Security (FDNS)

Site Visits

- ▶ USCIS checks up on H-1B petitioners (employers) and beneficiaries (employees) through site visits and compliance reviews by FDNS officers.
- ▶ Site inspectors review documents related to the H1B petition and interview personnel to confirm the beneficiary's work location, physical workspace, hours, salary and duties. Site inspectors will also often want to speak with the beneficiary.
- ▶ If an FDNS officer finds that the information is incorrect, we could face serious consequences. USCIS could revoke our H1B petition, leaving the H1B visa holder with no immigration status or work authorization.
- ▶ FDNS can also refer information collected from a site visit to other government entities, which in turn can possibly lead to civil/criminal penalties and prosecution.
- ▶ If an FDNS officer visits you, immediately ask to see identification. It is also a good idea to obtain the officer's name, title and contact information for follow-up. Call OIS to inform us of the visit.
- ▶ If you do not know the answer to a question that the officer asks, ask for the opportunity to first obtain accurate information and then follow-up with the officer.



Today's Agenda

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Questions about Permanent Residency

- ▶ There are multiple pathways to lawful permanent residency (LPR) status.
- ▶ If an employee contacts you about employment-based permanent residency, please contact our office directly.
- ▶ The Director will communicate with the department the feasibility, costs, timeline, and process of LPR sponsorship.
- ▶ Currently, all LPR cases are prepared with the use of approved outside legal counsel. [Outside Counsel Request Form](#)
- ▶ The Director is evaluating current practice, and is considering requests on a case-by-case basis until a more formal process can be implemented.





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