

# The “Special Handling” Alternative for College and University Faculty

By: **Donald W. Parker**

College and University faculty members have available to them a variety of expedited paths to United States permanent resident (“Green Card”) status.<sup>1</sup> One of these is the “Special Handling” Labor Certification Application procedure. The “Special Handling” procedure is an expedited Labor Certification Application based on recruitment that was done by a College or University for a faculty position at the time that the sponsored foreign national was hired. For those foreign national faculty members who are eligible, the “Special Handling” procedure provides the simplest and quickest avenue to United States permanent resident status.

Under the normal Labor Certification Application process (now called the “PERM” process), the employer must conduct a formal recruitment process (including advertisements in local newspapers and journals, internet advertisements, etc.) in order to establish that there are no U.S. workers who are qualified for the position for which the Alien Labor Certification is sought. In the PERM system, the existence of a qualified U.S. worker will result in denial of the Application even if the foreign national is more qualified than the U.S. worker.

Under the “Special Handling” procedure, provided that the Labor Certification Application is filed within 18 months of the date that the faculty position was offered to the foreign national, the College or University can rely solely on the recruitment that was performed at the time that the foreign national was hired. In addition, and in contrast to the normal Labor Certification Application process, the College or University need only show that the foreign national was, in its determination, the most qualified candidate for the position as determined in the discretion of the College or University’s faculty search committee.

In order to qualify for the expedited “Special Handling” procedure, the following requirements must be met:

- The employer College or University must qualify as an institution of higher learning and provide bachelor’s degrees or higher or offer courses that can be used as credit to such a degree (thus, programs offering associate degrees such as community or junior colleges are acceptable).

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<sup>1</sup> For example, faculty members and other scientific researchers may qualify for permanent resident status as EB-1 “Extraordinary Ability Aliens” or “Outstanding Researchers or Professors” or through the EB-2 category as “Aliens with an Advanced Degree” whose admission to the United States would be in the national interest. Persons qualifying under the EB-1 or EB-2 category are exempt from the Alien Labor Certification requirement – this process, which requires recruitment to establish the lack of availability of U.S. workers, is complex, time-consuming and expensive. However, the EB-1 and EB-2 categories are generally only available to more senior faculty members and researchers who can document significant professional achievements.

- The faculty position for which the foreign national is being sponsored must involve classroom teaching. Positions involving strictly research or other non-teaching duties do not qualify for “Special Handling”.
- The “Special Handling” Labor Certification Application must be filed within 18 months of the date that the foreign national is offered the faculty position.
- The recruitment which the College or University performed at the time that the foreign national was hired must have included an advertisement in the print version of at least one national professional Journal appropriate to the field.

Once eligibility has been established, the Labor Certification Application can be prepared. The Application consists of two components: (i) a Form ETA 9089, Application for Permanent Employment Certification, which contains a description of the position and attestations concerning the recruitment process that was undertaken; and (ii) evidence of the actual recruitment process that was conducted by the College or University at the time that the foreign national was hired. Evidence of the recruitment process will consist of a report describing the recruitment process and explaining why the foreign national was the most qualified person for the faculty position, a copy of the recruitment that was done (including the advertisement in a national professional Journal), an in-house posting, and the foreign national’s original application for the faculty position and his or her appointment letter.

The Form ETA 9089 is filed electronically with the U.S. Department of Labor, which will process and approve the application within 6 months. The evidence of the recruitment process is retained by the employer (or their legal counsel) in the event that the U.S. Department of Labor conducts an audit of the case at some point in the future.

As in any other employment-based application for permanent resident status, once the Labor Certification Application is approved, the employer will file an Immigrant Visa Petition on Form I-140 with the U.S. Citizenship and Immigration Service (“USCIS”) establishing that the foreign national is qualified for the faculty position for which they are being sponsored. Finally, the foreign national and his or her dependent family members can either file an Application for Adjustment of Status on Form I-485 with the USCIS concurrently with the Form I-140 or an Application for an Immigrant Visa at a U.S. consular post abroad after the approval of the Form I-140. Once the Adjustment of Status Application has been approved or the Immigrant Visa granted, the foreign national and his or her dependent family members will be admitted to the United States as permanent residents.

### **For more information...**

If you have any questions about the “Special Handling” procedures or the process of sponsoring a foreign faculty member or researcher for United States permanent resident status, please contact:

Donald W. Parker  
781-622-5930 ext. 236  
[dparker@mbbp.com](mailto:dparker@mbbp.com)

John J. Gallini  
781-622-5930 ext. 256  
[jgallini@mbbp.com](mailto:jgallini@mbbp.com)