

The email below was distributed to DDC-L and HRIS-L on April 12, 2006.

MEMORANDUM

TO: Vice Provosts, Deans, Directors, and Chairs

FROM: David E. Shulenburg

SUBJECT: Immigration and Recruitment Issues

The U.S. Citizenship and Immigration Services (formerly Immigration and Naturalization Service) of the Department of Homeland Security and the U.S. Department of Labor have demanding and intersecting requirements on issues related to the recruitment and immigration of foreign nationals. In order to ensure that KU meets these requirements and is able to respond efficiently to immigration matters, we are formalizing our practices for immigration-related petitions for permanent residency status.

The International Student and Scholar Services Office (ISSS), in collaboration with the Office of the General Counsel and the Department of Human Resources & Equal Opportunity (HR/EO), has completed policies and procedures on Immigration-Related Petitions and the Use of Outside Counsel for the Permanent Employment of International Faculty, Academic, and Staff Appointees. The full document is available at http://www.ku.edu/~issfacts/PDF/Perm_Res_Policy.pdf.

This policy establishes that:

- International employees in positions defined as temporary by KU are not eligible for an employment-based Permanent Residency (PR) petition.

Post-Doctoral positions are considered temporary for purposes of gaining permanent residency for international employees. They are limited-term appointments with a defined end date and with no expectation of continued employment. Therefore, Post Docs will not be granted search waiver promotions into regular Research Associate positions. A search will be required.

- The request to pursue steps toward an employment-based PR petition should be submitted to ISSS and must be approved by the Department Chair or Director, the relevant Dean or Designated Research Center Director, and, in the case of research positions, the Vice Provost for Research.
- ISSS must review and give authorization to proceed with KU-supported Outstanding Researcher or Professor petitions prior to consultation with outside legal counsel or to working with ISSS to file the petition. Employing units now have the option of filing Outstanding petitions through ISSS or through an immigration attorney.
- For those internationals who are not teaching faculty or otherwise eligible for consideration as an Outstanding Researcher or Professor, the employing unit must be willing to undertake national re-recruitment procedures to enable KU to demonstrate to the United States (US) Department of Labor (DOL) that there are no minimally-qualified US workers available to fill the position at the time of filing. By federal mandate, re-recruitment must be done between 30 and 180 days of filing Labor Certification (the first of three steps toward an employment-based petition for PR). If a minimally qualified U.S. citizen, lawful permanent resident, refugee, or political asylee applies for and is available to fill the position being advertised for, the hiring unit will be unable to pursue permanent residency via a Labor Certification petition.

This DOL procedure emphasizes the need to follow Equal Opportunity guidelines for recruitment, ensuring that all applicants, and particularly minority and women US citizens, are given an equal opportunity to apply for and be selected for positions that come open. An employing unit undertaking re-recruitment procedures will be expected to employ the best applicant for the position. The Post Doc experience of an international applicant will not count when DOL determines qualification of the applicant.

For every petition the University files with DOL there is the possibility of an audit. Audits may be randomly generated or targeted based on the institution's answers to the questions on the petition that is submitted. KU must reply to any audit within 30 days. Therefore, all documentation needs to be ready and on file before the unit submits the application. KU is required to keep all relevant recruitment documentation on file and accessible for a period of five years.

Failure to respond to the audit will result in the immediate denial of the petition. The Department of Labor (DOL) has also said that "substantial failure" to effectively respond to the audit could result in denial of the application and a ruling that would require KU to have DOL supervised recruitment for all future Labor Certification applications for a period of up to two years. The audit can be very comprehensive and may include a review of all applications for the position. All file contents can be audited and DOL can challenge our determination that a US worker was not qualified for the job.

If you need assistance with this process or have questions about the change in procedure, please feel free to contact Allen Humphrey at 864-7020 or Joe Potts at 864-3617.