

UMBC Final Guidelines for Employment-based Immigration Sponsorship

Purpose

UMBC is committed to recruiting and retaining a talented and diverse workforce. The purpose of these guidelines is to ensure a balance between these commitments, university hiring practices and federal laws pertaining to immigration and employment. Questions about these guidelines should be directed to UMBC's Office of International Education Services (IES).

Scope

These guidelines pertain to all employment-based immigration petitions submitted on behalf of UMBC, where employment is a required condition of the requested non-immigrant or immigrant status. Pursuant to institutional guidelines and policies, as well as Federal government regulations and requirements, UMBC has the discretion to accept or decline any request for employment-based immigration sponsorship.

Authorized Petitioner for Employment-based Immigration Benefits

IES is the only unit at UMBC with the authority to facilitate the preparation of employment-based immigration forms and petitions. As such, only authorized IES staff may sign and file employment-based immigration sponsorship petitions on behalf of UMBC. All immigration documents pertaining to the employment of foreign national (FN) faculty and staff members must be routed through IES.

IES is also the only unit authorized to serve as a liaison between UMBC, the U.S. Department of Homeland Security, the U.S. Department of State, the U.S. Department of Labor and authorized outside immigration counsel on matters pertaining to employment-based immigration petitions. UMBC has no obligation to honor faculty and staff employment contracts based upon immigration documents prepared and signed by independent lawyers or other campus units, unless these are also endorsed by appropriate IES staff members in accordance with these guidelines. Under exceptional circumstances, the Provost may authorize limited exceptions to these guidelines. Written requests for exceptions to these guidelines must be submitted to the Provost through IES prior to the filing of any employment-based immigration petition.

It is important to recognize that certain petitions, such as those for permanent residency, include forms prepared separately by the petitioner (UMBC) and the beneficiary (employee). While IES serves as UMBC's authorized petitioner for employment-based immigration petitions, IES staff are neither qualified nor permitted to provide legal advice or assistance to faculty and staff on the personal parts of employment-based immigration petitions. Employees are personally responsible for completing applicable forms correctly and compiling any and all supporting evidence. They should review instructions very carefully and consult a qualified immigration attorney if they have questions or concerns related to the personal part of a petition. IES can provide a list of such attorneys, if needed.

Responsibilities of Employing Department or Unit at UMBC

The employing department or unit is responsible for contacting IES to initiate and request immigration sponsorship for eligible employees. If the department or unit wishes to request employment-based immigration benefits for a FN faculty or staff member, the department chair or unit director must submit a request in writing to the Associate Director of International Student and Scholar Services. The

department or unit must be prepared to facilitate the completion of the necessary evidence and documentation to support the application.

- The employing department or unit may not represent that UMBC will petition for a specific category (e.g., H-1B) of immigration status without first consulting with IES. IES will review each case individually and advise on appropriate and available immigration options, based on policy, guidelines and legal requirements.
- The employing department or unit is not authorized to represent that the University is able to guarantee specific immigration status or benefits. Employment-based immigration is very complex and there are many factors outside of UMBC's control that may prevent a successful petition.
- The request to pursue employment-based immigration sponsorship must be approved by both the department chair or unit director, the dean or division head and the applicable vice president.
- Immigration application filing fees are the responsibility of the hiring department/unit. The department/unit may choose to work with their college or division head to determine how to cover the costs.
- If outside counsel is required to assist with an employment-based immigration petition, IES will provide the hiring department or unit with an estimate of any costs for which the department/unit would be responsible.

Employment-based immigration petitions cannot be submitted solely for the benefit of the foreign national employee. The employing department or unit must consult with appropriate IES staff prior to making a formal offer to a FN faculty or staff member to ensure the FN meets the basic eligibility requirements for the immigration classification necessary to accept the appointment for its full term. Once eligibility is established, IES will advise on the procedures and time frame required to obtain the chosen status and facilitate the timely filing of applications. The employment department or unit must then designate a single point of contact for IES to work with on the petition.

Authorized Use of Outside Counsel

The Attorney General of the State of Maryland maintains contracts with outside immigration counsel to assist with matters beyond the scope and capacity of individual institutions. IES will serve as UMBC's official liaison to authorized outside counsel. While there are certain instances where a faculty or staff member may submit a self-sponsored petition on his/her own and/or with the assistance of an attorney, the use of authorized outside immigration counsel is required in any case where UMBC is the petitioner on any of the following types of petitions:

- *Elective H-1B*
 - If IES determines an alternate immigration status (e.g., J-1) would satisfy needs for employment purposes and the hiring department or unit still wishes to pursue H-1B status, then the case is considered elective.
- *Non-standard H-1B*
 - If unusual complexities necessitate use of outside counsel in order to adequately file a petition, IES will investigate the cost difference in seeking consultation versus hiring

outside counsel to complete the H-1B petition in its entirety. IES will move forward based on a reasonable assessment of cost and effort.

- *Permanent Residency (Green Card)*
- *Workers of Extraordinary Ability (O-1)*
- *Petitions for Legal Dependents (eligible spouse and children)*
 - Such petitions are typically included at no additional cost when filed concurrently with the employee. However, petitions for dependents planning to join the employee after the start of employment will be filed by authorized outside counsel typically at the employee's own expense.

Instructions for Specific Employment-based Immigration Petitions

UMBC-Petitioned Applications for Permanent Residency

Requests to sponsor an eligible FN faculty or staff member for permanent residency based on employment must be routed through IES for initial review and consultation. With the approval of the department chair or unit director, the dean or division head and applicable vice president, IES will review the FN's eligibility for permanent residency and determine if the position meets minimum eligibility requirements. Employment-based petitions for a green card are complex and require a significant investment of staff time at the department or unit level and by IES. IES staff provide comprehensive advising to departments/units and their employees on the permanent residency process, and liaise with the immigration attorneys handling the case.

UMBC will support petitions for permanent residency provided the faculty or staff position is considered permanent. A position is considered permanent if there is an expectation of indefinite continued employment by the department or unit. The position may not have a defined, nonrenewable term; nor may the duties of the position be limited by the completion of a project or assignment. The following specific guidelines apply:

- Positions must be (1) tenured or tenure-track faculty; (2) non-tenure-track research professorial ranks; (3) lecturers or senior lectures; OR (4) regular staff positions.
- Positions must be full-time.
- Petitions for post-doctoral or graduate assistants, faculty research assistants and research associates will not be supported.
- The salary for this position must be paid by UMBC.
- The department/unit and college/division must stipulate an intention to maintain the appointment for at least three years. If a position is funded by a grant, the hiring department or unit must already have secured a minimum of three years of future funding at the time the permanent resident petition process begins and must demonstrate that continued funding for an indefinite period beyond the three years is highly probable.
- IES only files permanent residency applications that qualify for the EB-1-2 Outstanding Professor or Researcher or the EB-2 Members of the professions holding advanced degrees (labor certification under "special handling"). Under the EB-2 category, "special handling" is used for college and university professors and benefits from a less stringent labor certification process.
- The employee must have held the position for at least two years.

- **EB-1 Outstanding Professor or Researcher:** Applications for faculty and researchers who meet the criteria for Outstanding Professor or Researcher as defined by the Department of Homeland Security will also be processed by authorized outside immigration counsel, liaising with IES staff. Faculty with a current, valid status should hold that status for at least two years before the department can advocate to IES to begin their Permanent Resident application.
- **EB-2 Members of professions holding advanced degrees - Labor Certification under Special Handling:** Applications for faculty and staff who meet the criteria for “special handling” of the labor certification process as defined by the US Department of Labor will be processed by authorized outside immigration counsel, liaising with IES staff.

Self-Petitioned Applications for Permanent Residency

IES is not authorized to provide faculty or staff advice with respect to family-based or self-petitioned applications for permanent residency, such as the categories of National Interest Waiver or Alien of Extraordinary Ability. Because these applications are not based on employment, UMBC does not sponsor, advise on, or sign these applications. FN faculty and staff planning to self-petition for immigration benefits are strongly encouraged to consult with a qualified immigration attorney. The costs of these family or self-petitioned applications are generally the responsibility of the individual faculty or staff member. The employing department or unit may not hire an outside attorney to support these petitions nor sign any form to represent UMBC on these matters. Exceptions are made on a limited basis for employment reasons and must comply with the application procedure for exceptions to these guidelines. Individual departments may elect to compensate an employee for the cost of the employee’s self-petitioned permanent resident application. Such compensation is not required.

Non-immigrant Petitions

There are multiple options available for the hire of non-immigrant employees. The most common immigration categories supported by IES without the assistance of outside immigration counsel are the following:

- *B-1 Visitor Visa & Visa Waiver (payment limited to honoraria)*
- *F-1 Student*
- *H-1B Specialty Occupation Worker (standard and required)*
- *J-1 Scholar*
- *J-1 Student*
- *TN NAFTA Professionals*

Each of these immigration categories is very different and employing departments and units must consult with appropriate IES staff to determine which, if any, may be used to satisfy employment needs.

Date Approved by UMBC’s Council of Vice Presidents and Deans:

07/09/2018