

## **UMBC 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 Center for Global Engagement (CGE).

### **Scope**

These guidelines pertain to all employment-based immigration petitions submitted on behalf of UMBC, where employment is a required condition of the requested nonimmigrant 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**

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

CGE 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 CGE staff members in accordance with these guidelines. Under exceptional circumstances, the Provost & Senior Vice President for Academic Affairs may authorize limited exceptions to these guidelines. Written requests for exceptions to these guidelines must be submitted to the Provost & Senior Vice President for Academic Affairs through CGE 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 CGE serves as UMBC's authorized petitioner for employment-based immigration petitions, CGE 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. CGE will provide a list of such attorneys, if requested.

### **Responsibilities of Employing Department or Unit at UMBC**

The employing department or unit is responsible for contacting CGE to initiate and request immigration sponsorship for eligible employees. If the department or unit wishes to request employment-based immigration benefits for a foreign national faculty or staff member, the department chair or unit director must submit a request in writing to the International Scholar Coordinator. 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 CGE. CGE 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 UMBC is able to guarantee specific immigration benefits or status. 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 these costs.
- If outside counsel is required to assist with an employment-based immigration petition, CGE will provide the hiring department or unit with an estimate of any costs for which the department/unit would be responsible.
- In consultation with CGE staff, the employing department or unit should determine at the point of hire whether or not they intend to provide immediate green card sponsorship. Positions that involve teaching may be eligible for Program Electronic Review Management (PERM) system Special Handling, which greatly reduces the administrative burden of sponsorship, may allow the department to forgo the reselection process, and generally offers faster processing times overall.
- To take advantage of the provisions of special handling, the PERM application must be filed within 18 months of the date the foreign national was selected for the position (the date of offer, not the start date on the job).

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 CGE staff prior to making a formal offer to a foreign national faculty or staff member to ensure the foreign national meets the basic eligibility requirements for the immigration classification necessary to accept the appointment for its full term. Once eligibility is established, CGE will advise on the procedures and time frame required to obtain the chosen status and facilitate the timely filing of applications. The employing department or unit must then designate a single point of contact for CGE to work with on the petition.

#### **Authorized Use of Outside Counsel**

The Attorney General of the State of Maryland maintains contracts with qualified outside immigration counsel to assist with matters beyond the scope and capacity of individual institutions. CGE serves as UMBC's official liaison to authorized outside immigration 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 a private attorney, the use of outside immigration counsel contracted by the Attorney General is required in any case where UMBC is the petitioner on any of the following types of petitions:

- *Elective H-1B*
  - If CGE 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, CGE will investigate the cost difference in seeking consultation versus hiring outside counsel to complete the H-1B petition in its entirety. CGE 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.
  - CGE cannot prepare or review petitions filed on behalf of dependent spouses or children. Employees may work with UMBC's authorized outside immigration counsel at their own cost or seek alternative outside immigration counsel for their dependents' applications. CGE can file dependent applications concurrently with the employee's application but accepts no liability for those dependent applications.

## **Instructions for Specific Employment-based Immigration Petitions**

### *UMBC-Petitioned Applications for Permanent Residency*

Requests to sponsor an eligible foreign national faculty or staff member for permanent residency based on employment must be routed through CGE for initial review and consultation. With the approval of the department chair or unit director, the dean or division head and applicable vice president, CGE will review the foreign national's eligibility for permanent residency in consultation with contracted outside immigration counsel to determine if the position meets minimum eligibility requirements for the petition to be filed. 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 CGE.

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) teaching professors; 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.

- CGE only files permanent residency applications that qualify for the EB-1B 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 such applicants benefit from a less stringent labor certification process.
  - **EB-1B 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 CGE staff.
  - **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 CGE staff.

#### *Self-Petitioned Applications for Permanent Residency*

CGE 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. Foreign national 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 CGE without the assistance of outside immigration counsel are the following:

- *B-1 Visitor Visa & Visa Waiver (payment limited to honoraria)*
- *F-1 Student (including OPT and STEM OPT)*
- *H-1B Specialty Occupation Worker (standard and required)*
- *J-1 Exchange Visitor (Research Scholar, Professor, and Short-Term Scholar)*
- *J-1 Student*
- *TN NAFTA/USMCA Professionals*

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