

Carnegie Mellon University

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U.S. Permanent Residency - General Information

Explanation and Terms

This information is for the Carnegie Mellon student, researcher, or professor who is interested in becoming a U.S. legal permanent resident. Included in this document is general information as well as some specifics for obtaining U.S. legal permanent residency (LPR) while working at Carnegie Mellon University as a researcher, professor, or staff person. OIE does not provide expert or legal advice on the subject of U.S. permanent residency and does not provide direct services in this arena. Scholars are advised to reference government websites and seek the advice of a well-qualified immigration attorney for additional information. This handout does not address family-based LPR; for information on that topic, begin with the United States Citizenship and Immigration Services (USCIS) website (www.uscis.gov).

LPR is also referred to as the “green card,” “immigrant,” and “resident alien” process. A foreign employee who wishes to establish long-term residency and work authorization in the U.S. must take formal steps to apply to the U.S. federal government via the USCIS for legal permanent resident (“immigrant”) status in the U.S. Permanent resident visas are quota-limited, and only 140,000 permanent resident visas may be issued per fiscal year (October through September). These 140,000 slots are divided between five employment-based “preference” categories AND are limited by country (of birth) so that no more than 7% of the total number of visas can be granted to natives of any single foreign country in each fiscal year.

LPR typically follows several or many years in some other status such as H-1B, TN, O-1, J-1 or F-1. H-1B is a common stepping stone to LPR for those working in an academic environment such as Carnegie Mellon. Those who become U.S. LPRs may choose to become naturalized U.S. citizens after a certain period of time, although it is not required.

Five Typical Paths to LPR

A foreign national may apply for LPR based on different criteria including family-based petitions, refugee or asylum status, employment, etc. This handout features five typical paths in an academic community. Points 2 through 4 (below) are employment-based petitions which directly involve the Carnegie Mellon department as employer *and* sponsor and *must involve* one of the pre-approved Carnegie Mellon immigration attorneys for processing with the Department of Labor (DOL) and U.S. Citizenship and Immigration Service (USCIS). Only OIE is authorized to sign the G-28 forms that authorize a specific attorney to represent the institution in a non-immigrant or immigrant petition.

- 1. EB-1 Aliens of Extraordinary Ability.** Aliens who meet the EB-1 Aliens of Extraordinary Ability criteria may self petition to the USCIS based on extraordinary ability in the sciences, arts, education, business, or athletics. Federal regulations broadly define Extraordinary Ability as “...a level of expertise indicating that the individual is one of a very small percentage who have risen to the very top of the field of endeavor.” Evidence will include such things as receipt of nationally or internationally recognized prizes or awards, published material about the alien in professional, trade or media publications, participation in judging the work of others, etc. For a complete list of the criteria required, visit the USCIS website. A recent graduate, even with a Ph.D., will have difficulty qualifying in this category. Because they are exempt from the requirements of a labor certification and a specific job offer from a U.S. employer, such as Carnegie Mellon, aliens can choose to self-petition or have a U.S. employer petition on their behalf. In most cases, a person will use an immigration attorney to ably prepare the petition, but the assistance of an attorney is not required by the USCIS. Check with your attorney about current processing times.
- 2. EB-1 Outstanding Professor/Researcher.** EB-1 Outstanding Professor/Researcher is a good option for individuals who are outstanding but do not meet the “extraordinary ability” criteria. Those who qualify for this EB-1 category have at least three years of experience teaching or researching and must be tenured or tenure-track faculty or senior researchers in permanent research positions; post-doctoral researchers will not qualify. An individual is eligible if he or she is “recognized internationally as outstanding in a specific academic area.” Unlike EB-1 Extraordinary Ability, a job offer or job from a U.S. employer *is* required, and therefore an individual can not self petition; at Carnegie Mellon, the alien and department-employer must use one of Carnegie Mellon’s pre-approved immigration attorneys. A successful Outstanding Professor/Researcher petition will demonstrate that a sponsored employee has an exceptional record of scholarly achievement in his or her field, such as three years or more of teaching and/or research experience, a strong record of publications or authorship, evaluations by recognized experts in the field, and the receipt of prizes, awards, or other forms of professional recognition. The route to LPR through approval of an Outstanding Professor/Researcher petition is relatively short and can usually be completed in 12 to 24 months, in some regions. Check with your attorney for current processing times.

3. **EB-2 Advanced Degree Holder/Special Handling for Faculty Teaching Positions.** Using one of Carnegie Mellon's pre-approved immigration attorneys, the department/employer can apply to the Department of Labor (DOL) for labor certification under special handling rules for a sponsored employee who is appointed to a faculty teaching position such as lecturer or assistant, associate or full professor. Under special handling rules the department/employer is not required to demonstrate that there are/were no qualified U.S. citizen or permanent resident workers available for the position but that the appointee is/was the best qualified applicant. The department/employer can usually meet this requirement by presenting to the DOL the details of the typical recruitment process that led to the faculty appointment. Check with your attorney for current processing times.

*Note that special handling applications under PERM rules must be filed with the DOL **within 18 months of the sponsored employee's selection for the position.** Failure to file within this time period may make it impossible for the University to obtain permanent residence for an employee in a faculty teaching position for a period of several years or longer.*

4. **EB-2 PERM Recruiting for Advanced Degree Holders.** If a sponsored employee does not meet the requirements for EB-1 categories, the department/employer can apply to the DOL using PERM labor certification regulations and one of Carnegie Mellon's pre-approved immigration attorneys. PERM recruitment is a process whereby an employer proves to the DOL that there are no U.S. citizens or LPRs ready, willing or able to perform a particular job. This is done through a special advertising process under the supervision of the DOL. The department/employer must also meet DOL salary requirements in order to obtain an approved labor certificate. Once salary (or "prevailing wage") requirements are met, most university applications for labor certification in the academic job categories succeed, since the positions in question generally require high levels of education and specialized experience in short supply in the domestic labor pool. If granted, a PERM approval permits petition for LPR to USCIS. Check with your attorney for current processing times for PERM plus the I-140 and I-485.

Current legislation **requires that all costs related to PERM (including attorney fees, advertising costs, and PERM filing fees) must be paid by university employers** such as Carnegie Mellon. Therefore, individual beneficiaries (i.e. the employee) can no longer pay for their own PERM petitions. The department/employer at Carnegie Mellon must agree to sponsor the petition by paying for all related PERM costs; these costs may not be charged back to the beneficiary/employee in any form. If the department/employer does not or will not cover PERM costs, a PERM petition may not proceed.

5. **National Interest Waiver ("NIW").** Another path to LPR is known as the "national interest waiver," which does not necessarily require a job or job offer. The legislation that created this pathway allows the Attorney General "when (s)he deems it to be in the national interest, [to] waive the requirement... that an alien's services in the sciences, arts or business be sought by an employer in the United States." The provision can apply to both aliens of exceptional ability and to members of the professions holding advanced degrees or the equivalent. These applications for LPR are exempt from labor certification.

To obtain a national interest waiver it must be demonstrated that (1) the work being done is in the national interest, and (2) the alien's continued contribution is crucial to the work.

If an individual is employed by the University, one of Carnegie Mellon's pre-approved immigration attorneys will be contracted by the department/employer to use NIW to obtain LPR. If the department will pay for and/or sponsor the NIW petition on behalf of a Carnegie Mellon foreign employee, a pre-approved immigration attorney must be utilized. In most cases, employees in temporary positions such as postdoctoral fellows or lecturers will not be sponsored by the department/employer. Individual employees can apply on their own behalf under the NIW provision without University sponsorship. In this case, supervisors may be asked to supply letters of reference for the application but should make certain that application is not made on behalf of the University for an existing position or an offer of a future position.

Application Process

Two-Part Process and Timeline. There are two basic parts of the Legal Permanent Residence (LPR) process:

- 1) the I-140 petition to establish that the primary beneficiary meets the designated criteria, and
- 2) the I-485 petition to adjust status to U.S. LPR *or* application for an immigrant visa at a U.S. Consulate in the alien's country of nationality.

Most Carnegie Mellon employees use the adjustment of status process (Form I-485) since they remain in the U.S. for most or all of the processing period while continuing authorized employment at Carnegie Mellon. However, there may be concrete reasons or timing benefits for those who choose to consular process; these issues should be discussed with the immigration attorney handling the LPR petition.

The I-140 and the I-485 can be concurrently filed (at the same time) when an immigration visa number is available at the time of filing; when available, most immigration attorneys will file concurrently. Once the I-485 has been filed, the primary beneficiary or petitioner (and his or her family, if relevant) may apply for and receive work authorization and may apply for "advance parole" in order to legally exit and re-enter the U.S. without jeopardizing the pending request to adjust status to LPR.

Once the I-140 has been approved, and the I-485 progresses for those who will remain in the U.S. for the adjustment process; country of origin *may* be a factor in how long it will take for an alien to adjust his/her status to U.S. permanent residency. Discuss the “priority date” with the attorney processing the petition, and read the information on “visa backlog” below.

NOTE: Scholars who are maintaining H-1B status during the entire LPR process may choose to remain in H status and thereby avoid the necessity to apply for work authorization and/or advance parole. Discuss maintenance of H status with an OIE advisor and related issues with the attorney working on the LPR case.

Visa Backlog. There is frequently more demand for employment-based immigrant visa slots than there is availability; when this occurs, delays of years can be routine. A preference category can become oversubscribed in two ways: either the total category availability has been reached or the per-country limit for that category has been reached. For more information, refer to the [USCIS website](#).

Visa numbers for people born in India and China became backlogged thereby impacting many pending or in-process LPR petitions at Carnegie Mellon and around the country; the practical result of the visa backlog is long wait times either before the I-485 can be filed on behalf of pending LPR; or before the I-485 can be adjudicated by the USCIS. For specific information on current priority dates, refer to the [U.S. Department of State Visa Bulletin](#), available on the web.

Approval of U.S. Permanent Residency. The I-140 will be adjudicated prior to the I-485 and, if approved, an Approval Notice (Form I-797) will be sent by the USCIS to the attorney or petitioner.

Once the Visa Bulletin has published that the priority date has been reached (see sections above), the I-485 may proceed. Once the I-485 has been approved, an Approval Notice (Form I-797) will be sent by the USCIS to the attorney or petitioner. Shortly thereafter, the beneficiary will receive the green card as an approved LPR.

Cost and Fees. The fee for the I-140 is \$700 and for filing of the I-485 and related processes, the fees total \$1140. Fees for family petitions and work authorization (\$410) are additional. Attorney fees vary by region, according to the type of petition filed, and on whether or not dependent family members are included. In Pittsburgh, expect basic attorney fees to be \$4,000 to \$6,000, depending on the type of LPR petition being filed.

At Carnegie Mellon, department/employers and employees will need to discuss payment for the USCIS and attorney fees related to LPR processing. There is no University policy on these issues; however, since July 2007, regulations require that PERM-related expenses (attorney fees, advertising costs, and filing fees) must be paid by the University/Employer. For tenure-track faculty, senior researchers and other permanent positions, many departments will agree to pay a portion or all of the related LPR costs. For post-doctoral and other temporary positions, employees should not anticipate departmental funding for the LPR process. Employees should discuss first with direct supervisors and follow departmental direction or guidelines.

Conditions and Limitations

Requesting Departmental “Sponsorship.” As stated above under “costs and fees,” departmental practice at Carnegie Mellon varies regarding payment for LPR related costs. When an employee requests “sponsorship” from the department/employer there are three primary issues of concern: (1) will the department agree to support, with letters of reference, etc., the LPR petition of the individual, (2) will the department help to pay for a portion or all of the related fees and costs, and (3) is the position a permanent position that supports an employment-based petition.

Selecting a Qualified Immigration Attorney. The Office of the General Counsel and OIE have determined that most non-immigrant and immigrant matters which are not handled by OIE will be handled by select pre-approved attorneys. This is important not only for consistency but also because in employment-based LPR petitions, the attorney represents the Department/employer *and* the beneficiary. The following types of cases **must** be handled by a pre-approved Carnegie Mellon attorney:

- EB-1 Outstanding Professor/Researcher
- EB-2 Special Handling for Faculty Teaching Positions
- EB-3 PERM Certification for Advanced Degree Holders
- National Interest Waiver for a person working in a permanent or senior position at Carnegie Mellon or any NIW case where the department/employer will pay for attorney and other costs and fees

In the following types of cases, the foreign employee may progress without department/employer sponsorship and may select their own immigration attorney, opting to use a Carnegie Mellon pre-approved attorney, or not:

- EB-1 Aliens of Extraordinary Ability
- National Interest Waiver for a person working in a temporary position such as lecturer or post-doctoral fellow and where the costs and fees are paid by the individual (not the department/employer)

Note: Department/employers who will pay for the EB-1 or National Interest Waiver petition may require the use of a Carnegie Mellon pre-approved attorney.

Currently, Carnegie Mellon has designated the following attorneys as authorized to represent Carnegie Mellon and the beneficiary on employment-based LPR petitions.

Attorney	Law Firm	Phone	Email
Larry Lebowitz & John Brendel	Cohen & Grigsby, P.C.	412-297-4900	llebowitz@cohenlaw.com jbrendel@cohenlaw.com
Robert S. Whitehill	Fox Rothschild, LLP	412-391-1334	rwhitehill@foxrothschild.com
H. Ronald Klasko	Klasko, Rulon, Stock & Selzer, LLP	215-825-8608	rkasko@klaskolaw.com

J Status and 2-Year Home Residency Requirement. Persons who are or were in J status and are or were subject to the two-year home residency requirement must satisfy the obligation by returning home for two or more years or by obtaining a Statement of No Objection from the U.S. Department of State *and* a waiver from USCIS prior to moving into a more permanent work status such as H-1B or U.S. permanent residency. For more information on obtaining the waiver, visit the [U.S. Department of State website](#), and/or make an appointment with your OIE advisor. The waiver process typically takes 6 months or more, so, plan ahead!

Travel Outside of the U.S. While the LPR Application is Pending. Scholars with a pending petition to adjust to LPR (Form I-485) must apply for and receive “advance parole” through the USCIS before exiting and re-entering the U.S. An adjustment applicant who departs the U.S. without first obtaining advance parole is considered to have abandoned the adjustment application.

H-1B employees, still in valid status, alternatively may choose to exit the US and reenter in H-1B status in addition to applying for advance parole. Discuss thoroughly with attorney and the OIE H-1B advisor before proceeding.

Other Important Information

Portability. Portability refers to the ability to move from one employer to another. Aliens who have applied for LPR based upon EB-1 Aliens of Extraordinary Ability generally may move from one employer to another since the initial petition was not employment-based. Consult with an attorney about the change of address requirements with the DHS and the USCIS.

Aliens who have filed an adjustment of status (I-485) on the basis of a petition approved in certain I-140 petitions (including EB-1 Outstanding Professors and Researchers and EB-2 categories) may change jobs or employers in very specific types of circumstances without jeopardizing the LPR petition. Carefully consult with a qualified immigration attorney or advisor before changing jobs or employers.

Maintaining H-1B Status While LPR is Pending. OIE generally recommends that scholars maintain some other legal non-immigrant status, such as H-1B, while the LPR petition is processing. Maintained H-1B status also serves as an insurance policy for continued work authorization if the LPR petition is not successful.

Dependent Family Members. Dependents (spouses and unmarried children under the age of 21) can be, and usually are, included as beneficiaries along with the principal applicant. In adjustment of status cases, dependents may apply for employment using the I-765 form after the I-485 petition has been filed. If you have dependents, be sure to inform the attorney handling your petition.

Naturalization to U.S. Citizenship. While there is no requirement for an LPR to become a U.S. citizen, LPRs cannot vote, serve on juries, or hold certain elected public offices or jobs reserved for U.S. citizens. For those who elect to become a naturalized U.S. citizen, most handle the requirements of naturalization without the assistance of their employer or attorney. Visit the USCIS website and read Form M-476, *Guide to Naturalization*, for more information. Generally, a person is eligible to apply for U.S. citizenship after about 5 years as a U.S. LPR, although this timeline is shorter for people who marry U.S. citizens, and longer for those who spend considerable time outside of the U.S.

Disclaimer: *the information contained in this handout should not be construed as legal advice, but is intended for the general, informational use by Carnegie Mellon community members.*