

Office of International Education and Development



APPALACHIAN STATE UNIVERSITY

Memorandum on Advertisements for Permanent Teaching Faculty

FROM: UNC-GA, Division of Legal Affairs

When a foreign national is hired into a permanent faculty position, entailing some form of classroom teaching, one of the most common routes of sponsorship for permanent residence that constituent universities undertake is submission of an application for permanent employment certification to the US. Department of Labor (DOL). This type of application is rooted in the fact that the foreign national was selected as the more qualified candidate at the conclusion of a selective competitive and recruitment process for the position for which she or he has been hired. As the recruitment process is conducting without the knowledge that the selected candidate may need immigrant sponsorship, it may be helpful to consider and prepare for the possibility when initiating the search.

Background

Effective March 28, 2005, the DOL's Employment and Training Administration's re-engineered permanent labor certification ("PERM") application process took effect. The certification by the Employment and Training Administration ("ETA") of a PERM application permits an employer to hire a foreign worker to work *permanently* in the United States. Certification by the DOL of the PERM application represents only the first step in the process of sponsoring an employee for permanent residence, also known as receipt of a green card. Specifically, with regard to PERM applications filed on behalf of university and college teachers (known as "Special Handling"), ETA must certify to the U.S. Citizenship and Immigration Service that the foreign worker is chosen pursuant to a competitive recruitment and selection process and that she or he is found to be more qualified than any of the U.S. workers that applied for the job opportunity.

A Special Handling PERM application must be filed within 18 months of the selection of the foreign worker as a result of the recruitment process. Best practice is to view the date of selection as no later than the date of the offer letter provided to the candidate.

National Professional Journal

The federal regulations pertaining to Special Handling specify that at a minimum, the job opportunity must be posted in a national professional journal. The posting of the opening in a national professional journal may be achieved either in a print edition or an electronic or web-based journal. Regardless of whether in print or published electronically, the posting for the position must be placed during the recruitment process.

DOL does not define what is a "national professional journal," and has declined to provide a list of acceptable journals. In determining what amounts to an appropriate national professional journal, it is strongly advised to use a publication that contains more than mere job openings. For

organizations or associations that publish a journal, the use of its alternative newspaper/newsletter may not be acceptable. Generally, it is best to simply ask those in the department what is deemed a professional journal within the given field of study. Historically and perhaps surprisingly, DOL has accepted the Chronicle of Higher Education as a “national professional journal” for both its web-based and print editions. Also, DOL has accepted postings from www.insidehighered.com as web-based national professional journal.

DOL does not specify how many days a posting must be published if using a print journal. However, DOL has specified that when using a web-based or electronic journal the advertisement for the opportunity must be posted for at least 30 calendar days.

Please note the Special Handling PERM regulations provide for an alternative procedure on behalf of a university or college teacher. An employer may opt to use the basic PERM process, which is generally used for positions other than university or college teachers. The basic PERM process is often more costly and all recruitment and selection of the foreign worker must be accomplished within 180 days.

Content of the Advertisements

With regard to the content of any advertisements for the position, the advertisement in the required national professional journal, must include the following: (1) the name of the hiring institution, (2) the title of job opening, (3) the duties, and (4) the requirements of the position. The use of pointer ads will not suffice to meet the requirement. Throughout the recruitment process, all postings must consistently indicate the actual minimum requirements for the position. It is best practice to use the same language in all advertising so as to avoid inconsistencies.

When drafting a posting, please keep in mind the following:

- (1) Better to be succinct;
- (2) Note the required degree and field(s) of study;
- (3) Teaching or instruction should be referenced as a responsibility;
- (4) Eligibility for and/or holding of required licenses or certification need to be specified;
- (5) Avoid the listing of “preferences”;
- (6) Any requirement of work experience should be quantified; and,
- (7) If ABD is acceptable for selection, please specify that the PhD should be awarded by specific date, such as before appointment.

Evidence of the Recruitment Process

It is critical to retain documentation of the recruitment steps undertaken in the search as evidence. Whether held in an electronic or print format, copies of all advertising for the position should be collected. For print postings, the actual physical page containing the advertisement should be pulled. For e-publications, documentation should consist of a copy of the screenshot from the first day and last day of posting. If the position was posted on a listserv or the like, please hold a copy of the email posting the position. In the end, all evidence must conclusively demonstrate the start and end dates of the advertisement placement and the text of the advertisement.

If you should have any questions or concerns, please feel free to contact the Office of International Education and Development at issso@appstate.edu or 828-262-2046.