

## Frequently Asked Questions – Special Handling Labor Certification

### What is the Labor Certification Process?

The labor certification process is the first step of a three-stage process to obtain permanent residence (i.e. a “green card”). A labor certification application is a request by UC Davis for approval from the U.S. Department of Labor to fill a position permanently with a foreign national who performs classroom teaching at UC Davis.

### What is Special Handling?

Department of Labor regulations allow for universities to use a special labor certification process for professors and those who teach. This process is called “special handling”. Special handling provides significant advantages for the processing of labor certifications. Specifically, the recruitment and selection process that must be undertaken and documented by the University is much less onerous under special handling. Also, special handling cases may be processed by the Department of Labor faster than other labor certification applications.

### What Are the Threshold Qualifications for Special Handling?

In order to qualify for special handling, the University must demonstrate that the scholar performs classroom teaching and that the scholar was more qualified than any of the U.S. workers who were available, able, and willing to do the job after a competitive recruitment process was conducted for the position. The recruitment efforts that led to the scholar’s hire must have included at least one print advertisement in a relevant professional journal **OR** in an electronic or web-based version of a national professional journal. We recommend a print advertisement in a national professional journal as the most conservative and sure-fire vehicle for special handling recruitment. (Notably, the Department of Labor has consistently recognized the **Chronicle of Higher Education** as the best journal in which to advertise a job announcement for purposes of Special Handling recruitment.)

The Department of Labor is more suspicious of electronic journal advertisements, and has therefore included additional evidentiary requirements for such ads in the special handling context. Electronic journal advertisements can be used so long as:

- 1) The advertisement was posted for at least 30 calendar days on the website of a national professional journal. Proof must include:
  - a) A screen shot printout of the first day the advertisement ran and;
  - b) A screen shot printout of the 30th day the advertisement ran.
- 2) The job posting includes the job title, duties, and job requirements in the text of the advertisement.

Finally, a special handling application must be filed within 18 months of the final selection of the scholar by the University. Normally, the issuance of a formal appointment letter by the University following a competitive recruitment indicates the final selection date.

### **How Much and What Kind of Teaching Activity Is Required to Qualify?**

There are no specific requirements in terms of the amount or frequency of teaching involved. However, the Department of Labor has issued some guidance requiring that the teaching be classroom teaching. Scholars whose teaching duties are limited to student advising, private tutorials, medical rounds, and/or laboratory training/supervision without any classroom teaching may not qualify for special handling.

### **Is There Any Way Special Handling Can Be Pursued If More Than 18 Months Have Passed Since Final Selection of The Scholar?**

The 18-month time limit from the date of final selection is fixed by regulation and is not flexible. However, Department of Labor FAQs have suggested that, if a university conducts a good-faith new recruitment (re-recruitment) effort for the position, a special handling application may be submitted within 18 months after the scholar's re-selection following that re-recruitment effort, provided that the scholar was more qualified than any of the new applicants for the position. Weaver Schlenger Mazel LLP ("WSM") has successfully assisted UC Davis in obtaining approvals on several special handling applications that were based on re-recruitment. Please be aware that any re-recruitment effort must be done in good faith and all applicants for the position must be seriously evaluated to determine their qualifications. Additionally, there are specific steps that would need to be taken in connection with any re-recruitment effort. Please contact S.I.S.S. if you need to explore re-recruitment as an option.

### **Is There Any Way Special Handling Can Be Pursued If No Print Ads Were Used?**

Yes. Though the use of a print advertisement in a national professional journal is considered the best form of recruitment in a special handling application, the Department of Labor now accepts recruitment in electronic versions of national professional journals, so long as:

- 1) The advertisement was posted for at least 30 calendar days on the website of a national professional journal. Proof must include:
  - a) A screen shot printout of the first day the advertisement ran and;
  - b) A screen shot printout of the 30th day the advertisement ran.
- 2) The job posting includes the job title, duties, and job requirements in the text of the advertisement.

The Department of Labor will not accept electronic advertising that does not meet the above requirements. If the Department chooses to recruit through a print advertisement, the ad must be placed in a national professional journal like the Chronicle of Higher Education. In cases where a scholar was hired through a recruitment effort that did not meet the requirements above, re-recruitment (as discussed above) may be an option. Please contact S.I.S.S. if you need to discuss re-recruitment as an option.

### **How Long Does Special Handling Take?**

The time involved in a special handling labor certification can be divided into two parts: preparation and processing.

Normally, preparation (from the time the case is started to the time it is filed) takes three to five months, if all information and documentation is provided to WSM in an efficient and timely manner, and if the competitive recruitment and selection process has already been completed. More urgent cases with sensitive deadlines will be processed before those without such urgency. If the competitive recruitment/selection process is not yet complete, or if a new recruitment/selection process is required, at least 3-4 additional months may be required.

Under the Department of Labor's current "PERM" system for labor certifications, labor certification applications, including special handling applications, are supposed to be processed within three months of filing from the time that they are filed. In many cases, special handling applications are processed in less time, but processing times can be unpredictable. There are other factors (such as the possibility of an audit by the Department of Labor of the case documentation) that could significantly increase the total processing time involved.

The following outline of the steps involved in the special handling process provides more detailed information on the timing of cases and how our firm works with S.I.S.S., the department/section/school, and the foreign national scholar. We have also attached a one page "Action Time Line" providing a more general overview of the process.

### **Step #1: Initiation of Case**

#### **What happens?**

UC Davis's Services for International Students and Scholars ("S.I.S.S.") informs WSM of new special handling labor certification applications to be prepared. Typically, S.I.S.S. groups the cases and initiates 4-6 new cases at a time.

S.I.S.S. will send WSM the name, e-mail address, and department name for each scholar being sponsored for labor certification. S.I.S.S. also sends WSM the name and e-mail address of the administrator in the scholar's department to be contacted regarding the case.

WSM then e-mails each scholar and department contact with online questionnaires and a checklist of documents to be provided.

#### **How long does this step take?**

Once provided with names and e-mail addresses of the scholar and department contact, WSM will send out the questionnaires and document checklists within 1-2 business days.

## **Step #2: Submission of Questionnaires/Documents**

### **What happens?**

The scholar and department contact complete the online questionnaires and inform WSM of their completion. They also send Weaver, Schlenger, & Mazel all of the requested documents in the document checklists. S.I.S.S. also provides copies of the scholar's approved (or pending) H-1B or O-1 petition and a copy of the H-1B/O-1 approval notice (or, if still pending, the filing receipt).

WSM then reviews the questionnaires and documents and follows up with the scholar and identifies any issues requiring clarification or resolution or missing information/documentation.

### **How long does this step take?**

The scholar and department contact are encouraged to complete the online questionnaires and submit the required documents as soon as possible so that WSM can review the information well in advance of the in-person meeting (See Step #3, below). At the very latest, WSM needs to receive completed questionnaires and all required documents at least one week before the planned in person meeting at S.I.S.S. to ensure that there is ample time to review these items.

## **Step #3: Meeting at S.I.S.S.**

### **What happens?**

Shortly after the new cases are initiated, S.I.S.S. usually arranges a series of individual, in person meetings between WSM and each scholar/department being sponsored. These meetings will take place at S.I.S.S. It is expected that the scholar and the department contact will both attend the meeting.

At the scheduled meeting, WSM will describe the special handling provisions, clarify the particulars of the case, provide a more specific timeline for the case, follow-up on any outstanding information or documentation, and answer any questions that the scholar and department may have. At this meeting, S.I.S.S. and the department contact will also provide a signed copy of UC Davis's "Authorization to Employ Outside Counsel in an Immigration Matter" sheet for the case, which is the department's commitment to pay the legal fees and cost incurred in preparing the application.

Upon the completion of the meeting and the receipt of signed authorization for outside counsel forms, WSM opens up new files in its office for each new special handling case and bills the University.

### **How long will it take to schedule a meeting with the firm?**

S.I.S.S. will contact WSM to schedule the meetings at the same time as the new cases are initiated. Meetings for all new cases are scheduled on the same day. Since this requires coordination of the schedules of all

parties involved, meetings are usually scheduled at least 3-4 weeks following the initiation of the case. This also allows the scholar and department enough time to complete the questionnaires and send the necessary documents to WSM at least one week before the scheduled meetings.

#### **Step #4: Assessment, Prioritization, & Follow-Up**

##### **What happens?**

In light of the information received and the matters discussed at the meeting, WSM works with S.I.S.S. to prioritize the new cases based on order received and urgency. WSM also confirms that the scholar is eligible for filing in accordance with the special handling provisions.

If there is any uncertainty about a scholar's eligibility for a special handling labor certification, WSM will work with S.I.S.S, the department, and the scholar to address this uncertainty before proceeding further. If a re-recruitment process will be required, WSM will work with the department to coordinate arrangements for the new search/recruitment process.

##### **How long does this step take?**

One week, provided that all requested documents/information and a signed authorization to use outside counsel have been received by WSM and that a new recruitment/selection process is not required.

##### **Why might it take even longer?**

WSM needs a signed Authorization to Employ Outside Counsel, as well as all document information in order to proceed. If these items have not yet been provided, WSM will not be able to move forward until they are received.

If there are questions about a scholar's eligibility for a special handling labor certification, these must be resolved before WSM can proceed further. The time it takes to resolve these questions is highly variable and may take anywhere between a few days to several weeks, depending on the issues involved and the department, the scholar, and S.I.S.S.

If a new selective recruitment process is required, it may take several weeks for the details of the new process to be worked out and up to several months for it to be completed. With limited exceptions, this process must be completed before the next steps can be undertaken.

#### **Step #5: Prevailing Wage Request**

##### **What happens?**

WSM drafts a prevailing wage request for the position based on the position requirements listed on the department's questionnaire. The department confirms that the job duties and description are accurate and the scholar confirms that s/he can obtain experience letters or other documentation verifying all requirements.

WSM then uses this information to complete and submit the Prevailing Wage Request to the Department of Labor (“DOL”) to determine whether the wage paid to the scholar meets the prevailing wage for the position according to the SOC (Standard Occupational Classification) wage survey used by the DOL.

If the DOL does not provide a usable prevailing wage determination, WSM will contact S.I.S.S. and the department to discuss options.

### **How long does this step take?**

The process of obtaining a prevailing wage normally takes 1-2 months. However, the DOL sometimes becomes backlogged and may take much longer to provide determinations.

### **Why might it take even longer?**

Non-responsiveness or an inability to respond in a timely manner on the part of the department or the scholar will result in delay in the submission of the prevailing wage request to the DOL.

If the department determines that significant changes are needed to the job description/requirements or if the scholar will not be able to provide documents verifying that s/he has all listed experience, these issues must be resolved before the prevailing wage is submitted to the DOL. This may add several days, weeks, or even months of preparation time to the process.

If the DOL does not provide a usable wage from its SOC wage survey and a new prevailing wage request must be submitted with a request to use an alternate wage survey must be used, the process may take 1-2 months longer or more.

## **Step #6: Job Notices & Experience Letters**

### **What happens?**

While the prevailing wage request (from Step #5, above) is still pending at the DOL, WSM drafts job notices to meet Department of Labor requirements that notice of the labor certification be posted on the University campus and in any/all appropriate in-house media. These notices are sent to the department contact, along with detailed instructions for posting, completing, and returning them.

WSM also drafts template experience verification letters for the scholar to send to former employers. These letters are sent to the scholar with instructions on having them completed, printed, signed, and returned to WSM.

### **How long does this step take?**

One week for WSM to prepare and send these items.

The department must post a print copy of the job notice for at least ten consecutive business days, before it may be taken down, completed, signed, and returned to WSM, along with proof that the notice has been placed in any/all in-house media.

### **Step #7: Drafting of Documents**

#### **What happens?**

Once the posting and template experience letters are sent, WSM prepares a partial draft of the application form. WSM also drafts an employer support letter which will need to be signed by University official with actual hiring authority for the scholar's position (usually a Dean or the Vice Provost for Academic Personnel, depending on the scholar's rank).

Once a usable prevailing wage determination is obtained, WSM completes a draft of the application form and sends it to the department, the scholar, and S.I.S.S. to review for accuracy and completeness. After review, they inform WSM of any/all changes required. WSM then makes all such changes

#### **How long does this take?**

Once a usable prevailing wage determination is received, it will take WSM approximately one week to draft the forms and support letter and an additional week to make any required changes after the scholar, department, and S.I.S.S. review the forms.

#### **Why might it take even longer?**

WSM will be unable to finalize the forms and letter until the scholar, the department contact, and S.I.S.S. have all reviewed the draft form and indicated whether any changes are required.

### **Step #8: Signing of Documents**

#### **What happens?**

WSM sends the department a finalized version of the application form, with instructions for having it signed by the department contact, the scholar, and S.I.S.S. WSM also sends the University support letter to the department contact, with instructions for having it signed by a University official with actual hiring authority for the position. The signed form and letter are then forwarded to WSM.

#### **How long does this take?**

As noted above (in Step #7), WSM will be unable to finalize the forms and letter for signing until the scholar, the department contact, and S.I.S.S. have all reviewed the draft form and indicated whether any changes are required.

In most circumstances it takes approximately one week for the form to be signed by the department contact, the scholar, and S.I.S.S and returned and for the signed support letter to be forwarded from the appropriate University official.

### **Why might it take even longer?**

If the scholar, the department, or S.I.S.S. is unable to sign the finalized forms promptly, this will obviously delay their return to WSM. If there is a delay in obtaining a signature on the letter from the University official, this will delay its return to WSM as well.

If the department or the office of the Dean or Vice Provost wish to make any changes to the substance of the letter, the proposed changes will need to be reviewed by the attorney— and any problems raised by the proposed changes addressed— before the letter may be signed.

## **Step #9: Filing of Application**

### **What happens?**

Once WSM receives the signed application form, the signed letter from the University official with hiring authority, and all other necessary documents for filing (including the completed/signed job notices sent to the department and original experience letters obtained by the scholar), it will file the Labor Certification application electronically with the Department of Labor.

### **How long does this take?**

Normally, this takes 1-2 business days from the receipt of the signed form, signed letter, and all other required documents. However, under certain circumstances, it may be required to wait for several days/weeks before filing.

### **Why might it take even longer?**

Under PERM, a labor certification may not be filed until at least 30 days after the completion of the 10-day posting period of the job notice (See step #6 above). If fewer than 30 days have passed since the date the job notice was taken down, WSM may not submit the application until the requisite 30 days have passed.

## **Step #10: The Pending Application**

### **What happens?**

Special handling labor certifications will be reviewed by the Department of Labor and certified or denied using its automated system.

### **How long does this take?**

The Department of Labor may take up to 3 months to process labor certification applications. In the past, when special handling cases were processed by the Department of Labor's Chicago office, they often took only 2-3 weeks. More recently, decisions have been issued in much less time, sometimes in under a week. However, processing times are constantly changing and therefore difficult to predict.

### **Why might it take even longer?**

Processing times at the Department of Labor can change without notice. Additionally, the Department of Labor has indicated that in some cases (perhaps in as many as one-fifth to one-quarter), it will conduct an audit to verify that the University is following the Special Handling regulations by reviewing the documentation supporting the special handling labor certification. An audit will significantly increase the length of time until the Department of Labor can issue a decision on the case.

## **Step #11: Final Determination**

### **What happens?**

Assuming that the Department of Labor certifies the application, it will forward the original approved labor certification to WSM. WSM will forward the original certified documents to S.I.S.S. for use in further stages of the legal permanent residence process. WSM will inform the department and the scholar when this occurs. WSM will also send to S.I.S.S. any original documents that we have obtained from the scholar, with instructions that they be returned. WSM will also prepare and forward a special handling document compliance file for each labor certification. The University must maintain this file on its premises for five years.

### **How long does this take?**

WSM normally sends out the certified labor certification to S.I.S.S. and the original documents to the scholar within one business day of receiving it in the mail.

## **Step #12: End of Case**

### **What happens?**

WSM is retained by UC Davis only to prepare and file the special handling labor certification. Accordingly, our office does not generally file the I-140 or I-485 petitions with the USCIS. As we are not counsel on these applications, we will be unable to answer any questions related to a scholar's eligibility for adjustment of status. However, if a scholar has an approved I-140 and wishes to retain our office for the I-485 petition, we can be retained to represent the scholar in that application. If we are not retained for any work beyond the

labor certification application, once S.I.S.S. has acknowledged receipt of the labor certification and all original documents, WSM will close the case in our office and will send the file to storage.

**How long does this take?**

It should take S.I.S.S. less than a week to sign and return the Acknowledgement of Receipt forms. As soon as it is received, the file will be closed.

**Why might it take even longer?**

If the acknowledgement of receipt forms have not come within two weeks, WSM will confirm via FedEx tracking that the documents arrived. WSM will send an e-mail to S.I.S.S. stating that we assume they have received the documents sent, and that they should contact us immediately if they have not. If no response is received within a week, the file will be closed.