

SOUTH DAKOTA BOARD OF REGENTS

Full Board

AGENDA ITEM: 17

DATE: April 1-2, 2015

SUBJECT: BOR Policy 4:30 – Sponsorship of Employee Permanent Resident Applications

The Board of Regents, through Shared International Employment Services (SIES) assists full-time international faculty and administrative employees in acquiring and maintaining lawful status and eligibility to work at BOR institutions. This includes temporary work authorizations as well as permanent residency (“green card”) applications. The primary emphasis of permanent residency applications by SIES is for teaching faculty and tenure-track research positions. However, requests are also received for non-academic staff positions which have more difficult processing requirements and are time consuming to process, with a much lower success rate due to arduous DOL regulations intended to protect U.S. workers.

A policy has been developed to provide definitions for the processes and to specify which positions are eligible for SIES processing (sponsorship) and which positions are not eligible for SIES processing. The policy also provides an exception process, whereby an exception can be granted and the permanent residency applications can be processed through approved outside counsel.

Attached is the final version of the proposed policy that will govern sponsorship of employee permanent resident applications. The policy has been reviewed and approved by the Academic Affairs Council (AAC), Business Affairs Council (BAC), Research Affairs Council (RAC) and Technology Affairs Council (TAC) and legal counsel.

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Approve BOR Policy 4:30 – Sponsorship of Employee Permanent Resident Applications.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Sponsorship of Employee Permanent Resident Applications

NUMBER: 4:30

1. Preamble

United States immigration laws permit employers to sponsor certain classes of employees for permanent residency. On a case by case basis, institutions or administrative units may request authorization to sponsor such employees, but only if there is a compelling employer need to retain the services of an individual employee. As stewards of state resources, the role of the South Dakota Board of Regents and its institutional staff is limited to those aspects of document preparation and submission that are directly related to their interests and responsibilities as an employer; employees have sole responsibility for preparing and submitting documents on behalf of their spouses or dependents.

In those instances in which an employer is required to obtain a labor certification at its expense to support an employment based permanent residency application, the employing institution or unit must also confirm that funds have been identified to cover the required costs.

Subject to any contrary requirements of federal law, the evaluation of requests will be undertaken without regard to sex, race, color, creed, national origin, ancestry, citizenship, gender, gender identification, transgender, sexual orientation, religion, age, disability, genetic information or veteran status or any other status that may become protected under law against discrimination by applicable federal and state laws.

2. Position Eligibility for Employer Sponsorship

A. Eligible Positions – Institutions or administrative units may only request authorization to sponsor permanent residency applications for persons holding certain positions.

1. Professorial Rank, Tenured or Tenure-Track Positions with assigned responsibilities for classroom instruction; provided that the applicant has been in the position for at least one academic year, holds an advanced degree and may be deemed to be the best qualified person for that position.

2. Research Rank Positions; provided that the institution can demonstrate its intent to continue to seek external funding and a reasonable expectation that funding will continue (such as demonstrated prior renewals for extended long-term research projects); and provided, further, that the incumbent can has a consistent 3 year record of very strong research that has been recognized as outstanding in the academic field.

B. Non-Eligible Positions – Positions not eligible for Board of Regents sponsorship are positions defined as temporary positions including lecturer rank positions, professional or

administrative positions, civil service act positions, post-doctoral appointments, graduate teacher or research and other student positions, part-time positions.

C. Exceptions – Institutions or administrative units may request an exception for current employees holding certain full-time, Fair Labor Standards Act exempt, non-academic staff positions, such as, without limitation, research ranks where the incumbent does not yet meet the standards to be considered an outstanding researcher, extension specialist, programmer-analyst, or laboratory technician, but only if they can show that:

1. the uniqueness of the position makes the position difficult to fill, and a recruitment plan is submitted and approved;
2. the employee has been employed in a benefits-eligible, exempt staff position with the institution or administrative unit, without interruption, for a minimum of three years; and
3. there is sufficient justification that the employee is uniquely qualified through experience, skill, and background for the position.

3. Procedures

A. The Shared International Employment Services Officer has the authority and the responsibility to sign applications and petitions to be filed with United States Customs and Immigration Service (USCIS), United States Department of Labor (DOL), or other immigration-related government agencies on behalf of the Board of Regents or an institution in all matters involving the employment of foreign nationals in professorial or research ranks. The Shared International Employment Services Officer is also responsible for implementation of this policy through the development and publication of detailed procedures and the development and distributions of requisite forms.

B. A request for sponsorship may be initiated by an institution or organizational unit. The institution or administrative unit shall consult with the Shared International Employment Services Officer to clarify whether the position may be eligible for employer sponsorship under this policy and shall confirm sufficient funds to cover the costs of document preparation and submission under this policy. If approved by the relevant institutional Vice President, supported by an institutional or administrative unit with committed funding for mandatory employer expenses, and if indefinite or permanent employment is intended by both employer and employee, the application may be submitted to the Shared International Employment Services Officer.

1. If the request involves an employee holding an eligible position as defined in 2(A)(1), above, and meets all USCIS or DOL requirements, the Shared International Employment Services Officer, and an outside attorney when necessary, will proceed to process an application on behalf of the employee.

2. If the request involves an employee holding an eligible position as defined in 2(A)(2) above and meets all USCIS or DOL requirements, the Shared International Employment Services Officer and an outside attorney approved by the Board of Regent's General Counsel will proceed to process an application on behalf of the employee.

3. If the request necessitates an exception pursuant to 2(C) above, the Shared International Employment Services Officer will convene a special committee comprising the Shared International Employment Services Officer, the Board of Regents Human Resource Director, Board General Counsel or outside counsel, the Human Resource Director and a senior administrator appointed by the president of the campus involved with the permanent resident application. The special committee will review the application and determine whether to approve an exception and to direct the Shared International Employment Services Officer to proceed to process an application on behalf of the employee.
- C. Institutions and administrative units may only assume responsibility for non-immigrant and immigrant expenses required by law to be paid by the employer. All other associated costs and expenses, which are not the obligation of the employer under law, are the responsibility of the employee.

SOURCE: April 2015