

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

**AGENDA ITEM: 8 – A
DATE: June 26-27, 2024**

SUBJECT

Revised BOR Policy 4.1.8 – Sponsorship for Employee Permanent Residence Applications (First Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 4.1.8](#) – Sponsorship for Employee Permanent Residence Applications

BACKGROUND / DISCUSSION

This policy was first established in 2015 to set parameters for employment-based sponsorship for permanent residency including eligibility, waiting periods, stakeholder roles and cost responsibility. This policy has been instrumental in managing requests fairly and consistently. This process is managed through the System International Employment Services (SIES) center for all universities.

In recent years SIES has seen US Citizen and Immigration Services (USCIS) processing times increase, and the first step of permanent residency filing has become more complex. The current one (1) academic year waiting period for Professor/Tenure Track Teacher filings is creating the following challenges:

1. Compression in SIES activities to May/June which is also the peak H-1B filing time, creating workload challenges.
2. Increasing re-advertisements and associated costs when universities cannot meet the USCIS filing timeline, typically due to early employment offers in the spring prior to the fall academic term and expiring prevailing wages.
3. Information and activities needed from departments during busiest academic time of the year in the April and May months.
4. Increasing questions and concerns from candidates indicating this type of waiting period is not required elsewhere.

As a result, SIES proposes reducing the waiting period to one (1) academic semester which will reduce costs and create a better process for the departments and employees. The additional edits to the policy include simplifying text for easier understanding, generalizing in some areas to allow for flexibility and bringing the policy current to reflect roles and processes.

(Continued)

DRAFT MOTION 20240626_8-A:

I move to approve the first reading of the proposed revisions to BOR Policy 4.1.8.

Revised BOR Policy 4.1.8 (First Reading)

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IMPACT AND RECOMMENDATION

Approve the first reading of the proposed changes to BOR Policy 4.1.8, as outlined in Attachment I.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 4.1.8.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Sponsorship of Employee Permanent Resident Applications

NUMBER: 4.1.8

A. PURPOSE

To outline provisions for employment based permanent residency to support recruitment and retention of the most qualified candidates while ensuring legal compliance, responsible use of state resources and consistent employee experience.

~~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.~~

B. DEFINITIONS

1. ~~None~~ Lawful Permanent Resident: A person who has been granted the right to live in the United States indefinitely. Permanent residence includes the right to work in the United States either through most employers or self-employment. Permanent residents continue to hold citizenship of another country.

C. POLICY

1. Position Eligibility for Employer Sponsorship

- 1.1. Eligible Positions – ~~– Institutions or administrative units may only request~~

~~authorization to sponsor P~~ permanent residency applications may only be authorized for persons holding certain positions.

- 1.1.1. 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~~ semester, holds an advanced degree and may be deemed to be the best qualified person for that position.
- 1.1.2. 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 three (3) year record of ~~very strong~~ research that has been recognized as outstanding in the academic field.
- 1.2. Non-Eligible Positions – Positions not eligible for ~~Board of Regents~~ BOR sponsorship ~~include are positions defined as temporary positions including term faculty positions, lecturer rank positions, non-faculty exempt, professional or administrative positions,~~ civil service act positions, ~~post-doctoral appointments, graduate teacher or research and other student~~ and part time or temporary positions, ~~part-time positions.~~
- 1.3. 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:
 - 1.3.1. the uniqueness of the position makes the position difficult to fill, and a recruitment plan is submitted and approved;
 - 1.3.2. ~~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;~~ there is sufficient justification that the employee is uniquely qualified through experience, skill, and background for the position; and
 - 1.3.3. 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. ~~there is sufficient justification that the employee is uniquely qualified through experience, skill, and background for the position.~~

2. ~~Procedures~~ Process

- 2.1. Where a position is eligible for sponsorship as defined in Section C.1.1 the System International Employment Services (SIES) Officer, or an approved outside counsel will review to determine the permanent residency paths available and whether all Department of Labor (DOL) and United States Citizenship and Immigration Services (USCIS) requirements can be met. Where there is confidence the case has potential for success, SIES will contact institutional department leadership and human

resources to confirm:

2.1.1. Compelling employer need to pursue permanent residency sponsorship;

2.1.2. The employee is meeting performance expectations and there is no foreseeable risk to ongoing employment; and

2.1.3. Commitment of funds to cover employer costs (where applicable).

~~2.1. The Shared International Employment Services Officer has the authority and the responsibility to sign applications and petitions to be filed with United States Citizenship 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.~~

~~2.2. 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.~~

~~2.2.1. If the request involves an employee holding an eligible position as defined in Section C.1.1.1. 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.~~

~~2.2.2. If the request involves an employee holding an eligible position as defined in Section C.1.1.2. above and meets all USCIS or DOL requirements, the Shared International Employment Services Officer and an outside attorney approved by the Board of If the request involves an employee holding an eligible position as defined in Section C.1.1.2. 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.~~

2.2. If the request necessitates an exception pursuant to Section C.1.3. above, the Shared International Employment Services-SIES Officer will convene a special committee comprising the Shared International Employment Services Officer, to include the Board of Regents Human Resource Director, BOR Chief Human Resources Officer, Board-BOR General Counsel, institutional counsel, or outside counsel, the institutional Human Resource Director and an institutional 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.~~

- 2.3. The SIES Officer is responsible for implementation of this policy and has the authority and the responsibility to sign applications and petitions to be filed with United States Citizenship and Immigration Service (USCIS), United States Department of Labor (DOL), or other immigration-related government agencies on behalf of the BOR or an institution.
- 2.4. As stewards of state resources, the role of the BOR 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 the sole responsibility to prepare and file all documents on behalf of their eligible family members. The employee is responsible for any costs associated with immigration filings for eligible family members.
- 2.5. Institutions and administrative units may only assume responsibility for non-immigrant and immigrant expenses required by law to be paid by the employer. Costs for premium processing of petitions may be paid by a department for employment related purposes, such as avoiding disruption to employment authorization or to ensure timely start of employment. All other associated costs and expenses, which are not the obligation of the employer under law, are the responsibility of the employee. SIES acceptance of payment for fees or services related to the preparation and filing of petitions is not a guarantee of petition approval.
- 2.6. Permanent residency sponsorship is not an entitlement and can never be promised. Final decision on sponsorship will be made in the best interest of the institution.
- 2.7. This policy ~~is subject~~ will be implemented in accordance with all federal or state laws and other applicable BOR policies.

~~2.6.~~

FORMS / APPENDICES:

None

SOURCE:

BOR April 2015; October 2023 (Clerical).