

# Inviting & Hiring International Staff/Faculty An Overview

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# Which visa status should we request for a newly hired staff or faculty member?

The answer depends upon the situation...



# J-1 Visa – Visiting Researcher or Professor

- ❖ **5 Year Limit**
- ❖ May be subject to Rule 212(e) (Two-year home residency rule)
- ❖ Must have non-immigrant purpose – temporary position
- ❖ Visa Status for visitors to the U.S. must be invited to participate in research or teaching activities – may be either paid or unpaid
- ❖ The form DS-2019 is initiated by the department, issued by IPO, then mailed to the visitor to then apply for the U.S. visa
- ❖ Issuance of the J-1 visa depends upon the U.S. consulate in the home country; typically within one month to 6 weeks. Sometimes subject to administrative processing, which could take an additional 6 weeks.

## Who Qualifies for a J-1 Scholar Visa?

J-1 visas may be granted to international scholars

- who can show funding for 125% HHS poverty level;
- show compliance with insurance requirements;
- who have appropriate academic training and credentials (usually a B.S./B.A. or higher);
- who intend to engage in activities permitted under the program (teaching, research, etc.);
- and who intend to return to their home country after the program.

## Continued...Who Qualifies?

Temporary employees or those invited for research who pay their own way. These include but are not limited to:

- Post Doc's
- Invited Researchers
  - On Sabbatical
  - Funded by government scholarships, their universities, or employers to gain research experience/specific research
  - Graduate students whose research requires or is enhanced by research in the U.S. or with a specific professor and focus (may be self funded)
- Temporary instructors/visiting professors
- Undergraduate students may qualify if research is a required part of their curriculum

**Please Note:** A waiver of search requirements automatically authorized for J-1 Scholars (Exception #11 under HR's Approved Exceptions to Searches for Student & Temporary Positions ONLY)

# Sponsor/Employer/Department Obligations

- Collect the appropriate approvals before hiring/inviting the scholar
- Once approved, collect valid documentation for issuance of J-1 DS-2019 document (department pays for FedEx/shipping costs)
- Assist with finding on- or off-campus housing for the scholar before they arrive
- Provide an office or space with computer access and/or other media, and access to appropriate resources (library, building access, etc) in order for the scholar to function efficiently in their duties
- Risk Assessment - if not on payroll, responsible for making sure scholar signs waiver of liability form with Risk Management

# Employer's Wage Obligations

Depending upon whether or not the person is hired or invited and providing their own funding, the UI is not obligated to pay any wages or benefits unless specified in an employment offer letter and contract.

The scholar is required to prove that they have funding of \$1,135 per month available, in order to meet the 125% HHS poverty level which is currently \$13,613/year. They are also required to have health insurance that meets US Dept. of State requirements.

## Visa Fees/Filing Fees?

If a prospective J-1 scholar

- is in the U.S. and is transferring to the UI in the same category (i.e. research scholar), **\$0**
- is in another visa status (i.e. F-1), change of status must occur (takes 3-6 months), **\$470 total**
- Is outside the U.S., **\$180 SEVIS I-901 fee and cost of visa stamp/interview (approx. \$150).**

*The University is not obligated to pay any fees unless part of the job offer/contract. Departments rarely pay any of these fees.*



# **UI's J-1 Visa Scholar Process**

- See J-1 Scholar Process Graphic
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# H-1B Visa Overview

- ❖ H1B is the principal immigration status available for persons permanently or temporarily working in professional level jobs (“specialty occupations”) in the US.
- ❖ It generally requires that the employee have at least a four year degree or equivalent *AND that the position require a minimum of a bachelor’s degree.*
- ❖ Visa status is primarily for tenure-track researchers or faculty
- ❖ Employment is limited to the employer(s) who petition(s) for the employee. May hold more than one H1B at same time. H1B may be part time.

## H-1B Visa Overview Continued...

- ❖ Employment is generally limited to six years with ALL employers (unless employment-based permanent residence is begun by end of 5<sup>th</sup> year).
- ❖ Employment must be directly related to degree program (either current program or any prior degree program).
- ❖ The H1B beneficiary may have “dual intent”.

# Employer's Wage Obligation

- Must agree to pay higher of *actual* or *prevailing wage* (aka “required wage”).
  - Actual wage: wage paid to other similarly employed and similarly qualified workers at same worksite.
  - Prevailing wage: weighted mean or median wages for similar positions in geographic area of employment.
  - Basically, this means that a *competitive* wage must be offered.

# What Are the Employer's Obligations?

- Must agree to employ beneficiary as set out in the petition (no fraud!).
- Must need the services of the employee
- Must agree to employ H1B only in geographic location(s) set out in labor condition application.

# Employer's Obligations?

- Must agree to pay return transportation to country of nationality if H1B is terminated before the end of the visa petition approval (but not enforceable).
- Must notify other workers of terms of job (two 10 day postings of the Labor Conditions Application).

# What Are the Fees?

- Regular filing fee: \$325\*
- Fraud fee: \$500
- Premium fee: \$1225\*
- Filing fee for dependents: \$290\*

\*Change in fee amounts effective November 23,2010

# Who Pays for What?

- Usually departments pay, but it is the choice of the department.
  - Note: Filing fee and Anti-Fraud fee must be paid with employer checks – may be reimbursed by the employee.
- The employee may pay everything, unless:
  - Paying any or all of the fees would push the employee below the “required” wage.



# What's Filed and When?

- See H-1B Process Graphic
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# Are There Alternatives to the H?

## **TN (Treaty NAFTA)**

- for citizens of Canada and Mexico only.
- must be in an occupations listed at 8 Code of Federal Regulations Sec. 214.6(c) - mostly require a minimum of Bachelor's degree
- TN is given in three year increments
- requires residence abroad (no dual intent).

# Other Alternatives?

- H1B1 visa for Chile, Singapore: very similar to normal H1B, except granted in one year increments, requires residence abroad (no dual intent)
- E 3 for Australian citizens; again very similar to H1B; two year increments; minimum Bachelor's, dual intent ok; spouses may work
- J-1 professor/researcher
- O-1 alien of extraordinary ability/achievement

# Employment Based Permanent Residence

- Generally must have full time permanent job offer. Only exceptions, National Interest Waiver, Alien of Extraordinary Ability.

# Employment Based Immigration

- First step is generally labor certification (LC). Only NIW, Extraordinary Ability, Outstanding Professor/Researcher and Aliens of Exceptional Ability can avoid LC.
- LC requires employer to test the labor market, prove it can't find US workers, through highly structured recruitment process.

# Employment-Based PR--Steps

## 1. Labor certification

- Employer advertises position to “test the labor market”
  - Several forms of advertisement required
- Employer files application through PERM system (online)
- DOL approves, denies, or audits
- Employer must pay attorney’s fees and ad costs for LC.

## 2. Employer files immigrant petition (I-140) with USCIS

# Employment-Based PR--Steps

3. Employee files Adjustment of Status Application (I-485) with USCIS
  - Must have current “priority date” on Visa Bulletin to file
    - Some categories/countries backlogged, queues of several years
  - If “current,” may file petition and application together (“concurrent filing”)
  - Can apply for EAD and advance parole “travel document” with adjustment application
  - Spouse and unmarried minor children can file AOS at same time.
4. During entire process employee must maintain valid nonimmigrant status.

# Employment-Based PR Process

- See UI's Employment Based/Labor Certification Permanent Residency Steps



**QUESTIONS?**

