



Title of Proposed Procedures: Employment-Based Non-Immigrant and Immigrant Visa Procedures

Applies to (check all that apply):

Faculty X **Staff** X **Students** X

Division/Department: _____ **College** _____

Topic/Issue:

There are several visa categories used by organizations to employ foreign workers. A U.S. visa allows the bearer to apply for entry to the U.S. in a certain classification (e.g. student (F), visitor (B), temporary worker (H)). A visa does not grant the bearer the right to enter the United States. The Department of State (DOS) is responsible for visa adjudication at U.S. Embassies and Consulates outside of the U.S. The Department of Homeland Security (DHS), Bureau of Customs and Border Protection (BCBP) immigration inspectors determine admission into, length of stay and conditions of stay in, the U.S. at a port of entry. The information on a nonimmigrant visa only relates to when an individual may apply for entry into the U.S. DHS immigration inspectors will record the terms of your admission on your Arrival/Departure Record (I-94 white or I-94W green) and in your passport.

Background to Issue/Rationale for Procedure:

To clarify the college's role in the Citizenship and Immigration Services (CIS) petition process for employment-based non-immigrant and immigrant visa/status classifications.

State/Federal Regulatory Requirements (cite if applicable):

Title 8, Code of Federal Regulations (Title 8 of the CFR deals with "Aliens and Nationality", as does Title 8 of the U.S. Code.

Immigration and Nationality Act

Proposed Procedural Language

I. Definitions

- A. H-1B: Visa category is a non-immigrant status classification for the temporary employment of a foreign national who will perform professional services in a “specialty occupation” for a specific employer.
- B. Specialty occupation generally refers to an occupation requiring the theoretical and practical application of a body of highly specialized knowledge, and the attainment of at least a bachelor’s degree in that particular field.
- C. TN Visa: The North American Trade Agreement authorizes Canadian and Mexican citizens to enter the United States in TN Visa status for employment in certain professional occupations.
- D. Faculty: Regular, full-time faculty whose assignments include instruction, research, and/or public service as a principal activity and who hold academic rank as professor, associate professor, assistant professor, professional librarian, or instructor. The term faculty shall not include faculty appointed on a part-time (i.e., less than a full load of courses and/or less than one academic year) basis.
- E. Lawful U.S. Permanent Resident: This is the status of an alien who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant. One of the three principal eligibility avenues for legal permanent resident status is employment based.

II. H-1B Procedures and Requirements

Limitations

- A. The H-1B status requires petitioning by a U.S. employer on behalf of a foreign national. Applicants cannot self-petition for this visa status. The college will petition for the H-1B status or visa generally on behalf of faculty only.

Exceptions to the H-1B sponsorship policy: Sponsoring individuals other than faculty will be considered on a case-by-case basis. Before an exception can be considered, it must be established that the salary will meet or exceed an official prevailing wage determination by the local office of the Department of Labor, that the position qualifies as a true “specialty occupation” and that the individual selected is not disqualified by U.S. immigration regulations for sponsorship (such as an alien subject to I.N.A. § 212(e), the “two-year home country physical presence requirement”; an alien who had previously failed to

- maintain status; or an alien with too much prior time spent in H-1B status, as the maximum is six years.
- D. Faculty cannot engage outside legal counsel to petition on behalf of the College for H-1B status. It is the Chairperson's responsibility to notify Faculty of this restriction.
 - E. Faculty will not be considered for permanent status until they have been employed by the College for at least 15 months.
 - F. Employment with H-1B status does not guarantee the College's sponsorship for employment-based U.S. Permanent Resident status. If a Faculty member is interested in and qualified to for a permanent teaching position, the Faculty member may request the college's sponsorship for permanent residency, but the Faculty member must begin the application process at the outset of the Faculty member's second semester at the college, so that the "special handling" provisions ("special recruitment and documentation," available only for college and College teachers, can be used. Pursuant to existing regulations, special handling labor certification requests must be filed with the U.S. Department of Labor no later than 18 months after the Faculty member was selected, i.e., no later than 18 months from the date the VPAA signed the Faculty member's contract. Eligible faculty will be referred by the VPAA and the Academic Dean to legal counsel approved by the Maryland Attorney General's Office and qualified to file the special handling labor certification with the Department of Labor on behalf of the college, and to petition Citizenship and Immigration Services (CIS) for employment-based U.S. Permanent Residency (Second Preference category: Members of the Professions Holding Advanced Degrees) with the Faculty member as the beneficiary).
 - G. The College will not be obligated to financially assist with the process of petitioning for adjustment to permanent resident status, but will cover all costs and attorney fees for the labor certification which establishes eligibility for adjustment. Office of the Attorney General must approve all attorneys and associated attorney fees.
 - H. The Academic Department submitting an application for H-1B status for a qualified foreign national tenure-track faculty will be responsible for funding the specialized search including payment for advertisements.

III. TN Visa Procedures and Requirements

TN-1: Canadian Professionals

- A. As nationals of Canada, aliens who qualify for TN-1 status are not required to obtain a visa. They may apply directly for TN-1 status at the border. The applicant presents his/her evidence at the border to an interviewing officer

who reviews the evidence and makes a determination of the applicant's qualifications for TN-1 status. Based on the review of the submitted material, if approved, the applicant is given an I-94 and proceeds to enter the U.S. Human Resources will prepare an employment verification letter for presentation at the border provided that the employee is full-time and presents a valid I-94.

- B. The applicant must be a Canadian citizen and must intend to engage in employment in an approved profession and have an offer of employment. The applicant must possess the necessary credentials to be considered a professional in the approved profession the applicant is applying under. A bachelor's degree or higher is usually required for all approved professions on the list. If the profession requires licensing, then the applicant must possess the requisite license. The applicant must intend to stay in the U.S. for a temporary period. An applicant can be denied TN status because he has a pending immigration petition.

TN-1: Mexican Professionals

- A. An application and documentation must be submitted by mail to the U.S. Citizenship and Immigration Services. If approved, the applicant will receive an approval notice. The applicant must present the approval notice along with other required materials to the U.S. Consulate where the applicant applies for a visa. Mexican nationals seeking TN-2 status are required to obtain a non-immigrant visa to come into the U.S. If a TN-2 visa is issued, the applicant proceeds to the border and applies for entry into the U.S.
- B. The applicant must be a Mexican citizen and must intend to engage in employment in an approved profession and have an offer of employment. The applicant must possess the necessary credentials to be considered a professional in the approved profession the applicant is applying under. A bachelor's degree or higher is usually required for all approved professions on the list. If the profession requires licensing, then the applicant must possess the requisite license. Additionally, the applicant must intend to stay in the U.S. for a temporary period. An applicant may be denied TN status because he has a pending immigration petition, has an approved labor condition application from the Department of Labor, an USCIS approval, or a non-immigrant visa issued by the U.S. Consulate.

IV. Permanent Residency – Green Card Procedures and Requirements

Filing Requirements

- A. Applications for certification of employment of College and College teachers must be filed by submitting a completed Application for Permanent

Employment Certification form to the appropriate ETA application processing center.

Recruitment

B. The employer may recruit for teachers under Sec. 656.17 (CFR) or must be able to document the alien was selected for the job opportunity in a competitive recruitment and selection process through which the alien was found to be more qualified than any of the United States workers who applied for the job. Documentation of the competitive recruitment and selection process must include:

- (1) A statement, signed by an official who has actual hiring authority from the employer outlining in detail the complete recruitment procedures undertaken; and which must set forth:
 - (i) The total number of applicants for the job opportunity
 - (ii) The specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and (2) A final report of the recommending body and selection committee of the alien, at the completion of the competitive recruitment and selection process; (3) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements; (4) Evidence of all other recruitment sources utilized; and (5) A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements.

Time Limit for Filing

- A. Applications for permanent alien labor certification for job opportunities as college teachers must be filed within 15 months after a selection is made pursuant to a competitive recruitment and selection process.
- B. Alternative procedure. An employer that cannot or does not choose to satisfy the special recruitment procedures for a college teacher under this section may avail itself of the basic process at Sec. 656.17. An employer that files for certification of employment of college and College teachers under Sec. 656.17 or this section must be able to document, if requested by the Certifying

VI. Administrative Procedures and Responsibilities

- A. The Academic Dean is responsible for obtaining approval from the VPAA to petition for permanent residency for faculty. A written request to begin the petition process must be submitted to the Human Resources Offices.

- B. The designated HR representative and the VPAA are authorized to approve and sign immigration-related forms and documents for Faculty on behalf of the college.
- C. Pursuant to the checklist attached, the Coordinator of Training will assist academic departments in applying for H-1B status on behalf of qualifying foreign national Faculty. To assure timely filing of H-1B applications, it is the responsibility of the department chairperson to contact the Coordinator of Training no later than 2 weeks before the effective date of employment.
- D. When necessary, the Human Resources Office will publish general information regarding immigration compliance matters consistent with the Visa Policy and Procedures.
- E. Position descriptions written and approved by Human Resources may not be modified to support specialty occupation requirements. Unauthorized revisions to position descriptions for the benefit of securing a foreign worker will be considered a policy violation that may result in disciplinary action.
- F. Human Resources will be responsible for facilitating the process and authorizing documents for eligible faculty and staff.

Proposed Implementation Date: June 23, 2009

Originator/Division: Human Resources