



UNIVERSITY OF  
SOUTH ALABAMA

# **Guide to Hiring a Foreign National**

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## **INTRODUCTION**

The United States Customs and Immigration Services (USCIS), Department of State (DOS) and Student and Exchange Visitor Program (SEVP) have specific regulations which govern the employment and compensation of foreign nationals in the United States. Many non-immigrant visa categories exist that allow an individual to legally be employed, compensated, and/or visit the University of South Alabama (USA). In most cases, restrictions exist that directly affect the length of stay, the capacity in which the foreign national is employed, and the type of visa and work authorization that can be requested and issued.

Foreign nationals coming to USA and USA Health for employment, paid or unpaid, will require sponsorship from a USA or USA Health department. Their status at the University can be in the form of a student, student intern, post-doc, visiting scholar, faculty/staff, research scholar, or professor. The Office of Immigration (OI) should be contacted no later than 2 months, in some cases no later than 6 months, in advance prior to inviting or hiring any non-U.S. citizen. Communication between OI, USA/USA Health department, and foreign nationals is critical in making sure that the transition to the University is done as smoothly as possible.

In this guide, OI has outlined common non-immigrant visa classifications that allow foreign nationals to legally visit or be hired by USA/USA Health.

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## VISA CATEGORY GUIDE

<u>Category</u>	<u>Definition</u>	<u>Length of Stay</u>	<u>Dependent</u>
<b>B-1</b>	To consult with business associates, travel for a scientific, educational, and professional or business convention, or conference on specific dates.	Maximum 6 months, but time is determined at the time of entry by Customs and Border Protection (CBP).	Not available
<b>F-1 CPT</b>	F-1 student will apply for work authorization for:  Curricular Practical Training with the immigration advisor at their institution.	CPT: Usually, one semester at a time.	F-2 (not eligible for employment)
<b>F-1 OPT</b>	Optional Practical Training directly related to the student's major area of study.	OPT: Initial limit is 1 year with 24-month extension if the student is in an approved STEM program and also working for a E-Verified company.	
<b>H-1B</b>	Temporary Worker in a Specialty Occupation. Must demonstrate that they have specialized skills.	6 Year Maximum	H-4 (eligible for work authorization)
<b>J-1</b>	Categories: Short-term Scholar, Research Scholar/Professor, Specialist  Must demonstrate expertise, with at least a bachelor's degree.  May be employed by U.S. institution, or sponsored at U.S. institution with self-funding.	5 years – Research Scholar/Professor  1 year – Specialist  6 months – Short-term Scholar	J-2 (eligible for work authorization)
<b>J-2</b>	Dependent of J-1 – May apply for work authorization through petition with USCIS	Length of stay is dependent upon J-1's status	Not applicable

<b>O-1</b>	Foreign nationals with extraordinary ability in the sciences, arts, education, business or athletics. "Genius visa"	O-1 can have unlimited extensions in 1-year increments.	O-3 (not eligible for employment)
<b>TN</b>	Pursuant to the North American Free Trade Agreement ("NAFTA"), Canadian and Mexican nationals are eligible. Must be from a specific list of professions, Must be sponsored by a U.S. employer and paid by that employer.	Initial limit is 3 years with unlimited number of 1-year extensions permitted	TD (not eligible for employment)
<b>VWP</b>	Travelers coming from specific countries to the U.S. for tourism or business for 90 days or less from qualified countries may be eligible to visit the U.S. without a visa if they meet the visa waiver program requirements.	Maximum 90 days	Not available
<b>Permanent Residence</b>	A permanent resident is someone who has been granted authorization to live and work in the United States on a permanent basis.	Initial limit is 10 years and renewable	Not available

## **B-1 TEMPORARY BUSINESS VISA**

### **Purpose and Background**

The B-1 category is normally used for foreign nationals who wish to come to the United States to engage in business, negotiate contracts, consult with business associates, attend professional conferences, give or attend lectures, or conduct independent research. The purpose of the business cannot constitute employment.

### **Length of Stay**

The B-1 visitor stay is based on the amount of time needed, and cannot exceed one year. In general, the length of stay is normally a short period with an initial stay not to exceed 6 months. The Customs and Border Protection (CBP) agent at the port of entry determines the length of stay. Extensions are permitted, but cannot exceed the maximum allowable time of one year.

### **Key information**

- Dependents are not eligible for dependent visas. Each dependent who plans to accompany the principal must apply for a separate visa under the B-2 visitor category.
- The foreign national must be able to prove they have the funds to cover the expenses of the trip.
- The trip must be legitimate and temporary in nature.
- You must be able to demonstrate that you maintain a residence in your home country.
- The B-1 visa may not be used for employment.
- B-1 visa holders cannot apply for permanent residency.

## **F-1 CURRICULAR PRACTICAL TRAINING (CPT)**

### **Purpose and Background**

Curricular Practical Training (CPT) is a benefit of F-1 status which allows F-1 degree-seeking students the opportunity for employment which is temporary and directly related to the student's academic curriculum per USCIS regulation 8 CFR 214.2(f)(10)(i): (i) Curricular practical training. An F-1 student may be authorized by the Designated School Official (DSO) to participate in a CPT program that is an integral part of an established curriculum. Curricular Practical Training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full-time CPT are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization for CPT must be made to the DSO. A student may begin CPT only after receiving his or her Form I-20 with the DSO endorsement.

### **Length of Stay**

A student may participate in CPT as much as their program will allow and their academic department will authorize. However, a student will be ineligible for OPT if he/she participates in greater than **364 days** of full time CPT.

### **Full-time and part-time CPT**

CPT can be authorized for full-time employment, more than 20 hours per week, during official break periods, or part-time employment, 20 or fewer hours per week, during the academic semester. However, the student must be simultaneously enrolled for sufficient credit hours to maintain lawful F-1 status. The cumulative use of full-time CPT for 365 days or more negates a student's eligibility for any OPT. Part-time CPT does not affect a student's eligibility for OPT.

### **Key Information**

In some cases, the employment may be full-time and off campus. Prior to beginning employment, the student must receive permission from the Designated School Official in the Office of Immigration and a new I-20 noting the details of the CPT approval.

Although CPT cases are reviewed on an individual basis by the Office of Immigration, there are a few guidelines to keep in mind when considering CPT. CPT Employment can be approved only while a student is pursuing a degree. Once the student has completed all program requirements, he/she is no longer eligible for CPT. A program extension may not be requested for the sole purpose of engaging in CPT. Curricular

Practical Training is for specific offers of employment. Thus, a job offer is required before the request for authorization may be approved.

### **Termination**

Contact OI if employment is terminated by employer or student.

## **F-1 OPTIONAL PRACTICAL TRAINING (OPT)**

### **Purpose and Background**

F-1 international students are nonimmigrants pursuing a full course of study to achieve a specific educational or professional objective. Optional Practical Training (OPT) is temporary employment that is directly related to the F-1 student's field of study. If eligible, F-1 students can apply to receive up to 12 months of OPT employment authorization before completing their academic studies (pre-completion), and/or after completing their academic studies (post-completion). F-1 students who have been granted standard pre-completion or post-completion OPT will be issued an Employment Authorization Document (EAD) card.

Students who have earned degrees in certain science, technology, engineering and math (STEM) fields may apply for a 24-month STEM OPT extension of their employment authorization. The employer must be enrolled in E-Verify, and the F-1 student must have received an initial grant of post-completion OPT employment authorization based on their STEM degree. USA/USA Health are E-verified employers with some departments having federal grant E-Verified accounts. Any student applying for STEM OPT Extension at USA/USA Health should consult with OI.

**Students from other institutions interested in applying at USA/USA Health under STEM OPT should contact the immigration adviser listed on their I-20.**

### **Length of Stay**

All F-1 students are eligible for an initial 12-month OPT, and are eligible for an additional 24-month OPT if their STEM field is specified with the Department of Labor and their employer is E-Verified.

### **Dependents**

Dependents of F-1 students are classified under the F-2 category. F-2 visa holders are not employment eligible. However, F-2 dependents may take part-time courses.



## **F-1 Optional Practical Training (OPT) – Continued**

### **Key Information**

- Students must have been lawfully enrolled on a full-time basis at an SEVP-approved school for one full academic year before being eligible for OPT.
- Students in English language training programs are not eligible for OPT.
- OPT must be directly related to the student's major field of study.
- OPT is available before and after graduation, but different rules apply to pre- and post-completion OPT.
- Students may engage in OPT anywhere in the United States as long as the employment and employer qualify under OPT standards.
- Use of pre-completion OPT will impact post-completion OPT.
  - a. Full-time pre-completion OPT is deducted from the 12-month cumulative limit at the full-time rate; part-time is deducted at a 50% rate.
- Certain STEM degrees are eligible for an additional 24-month OPT extension.
- No offer of employment is required to apply for standard OPT, but the student is expected to work during the OPT EAD validity period.
- Work can begin only after receiving EAD issued by USCIS, and on or after the start date on the EAD.

### **Termination**

Contact OI if employment is terminated by employer or student.

## **H-1B TEMPORARY WORKER IN A SPECIALITY OCCUPATION**

### **Purpose and Background**

The H-1B program allows USA and USA Health to temporarily employ a foreign worker in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. An H-1B candidate must possess a bachelor's degree or higher in a specific specialty or its equivalent. H-1B specialty occupations may include STEM (Science, Technology, Engineering, Mathematics), information technology, biology, and chemistry. Specialty occupations are characterized as having duties so specialized and complex that the knowledge required to perform the duties is usually associated with the minimum requirement of a bachelor's degree at entry level.

H-1B workers must be paid a salary that equals at least the US Department of Labor determined prevailing wage. To sponsor an H-1B worker, the University of South Alabama and USA Health, through the Office of Immigration, must file petitions with the US Department of Labor (DOL) and the US Citizenship and Immigration Services (USCIS) indicating that the University will appoint and pay the individual the prevailing wage.

### **Eligibility**

In general, to be eligible for H-1B sponsorship, the position must be full-time and require a minimum of a bachelor's degree and the sponsored employee must meet that requirement and possess any necessary licensure. Some individuals, even if they meet the degree and licensure requirements, may not be eligible for H-1B status based on their immigration history. For example, those who have already used the six-year limit on H-1B status are ineligible for an additional period of H-1B status until they have resided and been physically outside of the U.S. for at least one year. Similarly, those who are subject to the two-year home residency requirement based on their current or prior J-1/J-2 Exchange Visitor status are ineligible for H-1B status until they have either fulfilled the requirement or obtained a waiver through the Department of State and USCIS. A person for whom a department wishes to sponsor an H-1B should contact the Office of Immigration to discuss their eligibility for an H-1B visa.

### **Processing Times – Plan up to 6 months in advance!**

Because USCIS H-1B processing times vary from 8-10 months, OI can only provide an estimate of the timing for a particular petition. Departments should make every effort to initiate an application as early as 6 months before the desired H-1B start date, which is the earliest that USCIS will accept an H-1B petition. Expedited processing, or "premium processing," is available for a \$2,500 fee; this guarantees a decision by USCIS within 15 calendar days. OI requires at least one month to process and submit an H-1B petition from the time the department and individual submits all required documents. USA departments may choose to hire a University-approved attorney to handle the H-1B petition at the expense of the department. USA Health H-1B petitions are handled by a University-approved attorney due to the extensive work and additional processing needed for health worker petitions at the expense of the department.

## **Length of Stay**

H-1B status can be granted for an initial stay of up to three years and can be extended for a total of six years. Extensions beyond six years are granted in limited cases. For example, the length of stay beyond six years is allowed when an adjustment of status is pending, including those involving permanent residency (green card). OI can assist departments in determining initial length of stay and extensions of H-1B.

## **Employee-Employer Relationship**

USCIS states in order to qualify for an H-1B classification a valid relationship must exist between the foreign national and the University. According to USCIS memo dated 08 January 2010, an authentic employee-employer relationship exists when the petitioner (USA/USA Health) can adequately prove it has, "The right to control over when, where, and how the beneficiary performs the job." The "right to control" does not equate to actual control over each and every function performed by the beneficiary. In order to make a determination, USCIS considers the following eleven questions with no one factor being decisive:

1. Does the petitioner supervise the beneficiary and is such supervision off-site or on-site?
2. If the supervision is off-site, how does the petitioner maintain such supervision, *i.e.* weekly calls, reporting back to main office routinely, or site visits by the petitioner?
3. Does the petitioner have the right to control the work of the beneficiary on a day-to-day basis if such control is required?
4. Does the petitioner provide the tools or instrumentalities needed for the beneficiary to perform the duties of employment?
5. Does the petitioner hire, pay, and have the ability to fire the beneficiary?
6. Does the petitioner evaluate the work-product of the beneficiary, *i.e.* progress/performance reviews?
7. Does the petitioner claim the beneficiary for tax purposes?
8. Does the petitioner provide the beneficiary any type of employee benefits?
9. Does the beneficiary use proprietary information of the petitioner in order to perform the duties of employment?
10. Does the beneficiary produce an end-product that is directly linked to the petitioner's line of business?
11. Does the petitioner have the ability to control the manner and means in which the work product of the beneficiary is accomplished?

The University must also be able to establish that control over the beneficiary's work will continue for the entire duration of employment. The University normally satisfies the Employee-Employer Relationship requirement by providing a standard employment environment. A foreign national reports directly to a department chair or designated person on a daily basis. The department sets the work schedule of the foreign national, and the foreign national uses tools and instrumentalities provided by the University to

perform daily tasks. The University claims the foreign national for tax purposes and provides health benefits to the foreign national.

## **Restrictions**

- A foreign national subject to 212(e) two-year home residency that resulted from a previous J-1 visa does not qualify for H-1B until the home residency is satisfied. However, if the individual obtains a recommendation from the Department of State, this requirement can be waived. Recommendations are requested by a university-approved immigration attorney and coordinated by OI. The department requesting the recommendation may pay for the waiver fees.
- A prevailing wage determined by the Department of Labor is required. The prevailing wage will be considered the minimum salary the foreign national must be paid.
- An H-1B visa holder cannot accept payment from any source other than the University of South Alabama or USA Health. For example, a researcher receiving payment from a government source must be classified as a J-1, and will be considered ineligible for H-1B.

The University and USA Health reserve the right to process petitions through a University-approved immigration attorney. OI will consult with departments if this option is necessary.

## **212(e) Two-Year Home-Country Physical Presence Requirement (J-1 Visa Waiver)**

Certain exchange visitors (J-1) are subject to a two-year home-country physical presence requirement which requires them to return to their home country for at least two years at the end of the exchange visitor program. This is also known as the foreign residence requirement under U.S. law, Immigration and Nationality Act, Section 212(e). If a foreign national is subject to 212(e), and the department wishes to sponsor them for an H-1B, the potential employee must obtain a waiver approved by the Department of Homeland Security prior to changing status in the United States or being issued a visa in certain categories for travel to the United States. OI will assist departments with this process, should they want to pay for the University-approved attorney to process the waiver.

Processing times for waiver recommendations by the Department of State, Waiver Review Division vary depending on the basis under which the applicant requests a waiver of the two-year home-country physical presence requirement. The processing time begins when all supporting documentation is received.

The times listed below are estimates only.

No Objection Statement	6 to 8 weeks
Interested U.S. Federal Government Agency	4 to 8 weeks
Persecution	3 to 4 months
Exceptional Hardship	3 to 4 months
State Public Health Department (Conrad State 30 Program)	4 to 6 weeks
Advisory Opinion	4 to 6 weeks

**Notice:** Some waiver recommendation applications require further administrative processing. For these cases, it will take additional time for the Waiver Review Division to send its recommendation to USCIS.

## Conrad 30 Waiver Program

(As of September 2020, USA Health **can no longer** request J-1 visa waivers through the Delta Regional Authority)

The Conrad 30 Waiver program allows J-1 medical doctors to apply for a waiver of the 2-year residence requirement upon completion of the J-1 exchange visitor program. The program addresses the shortage of qualified doctors in medically underserved areas. Although each state has developed its own application rules and guidelines, the following program requirements apply to all J-1 medical doctors. The J-1 medical doctor must:

- Agree to be employed full-time in H-1B nonimmigrant status at a health care facility located in an area designated by U.S. Department of Health and Human Services (HHS) as a Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Population (MUP).
- Obtain a contract from the health care facility located in an area designated by HHS as a HPSA, MUA, or MUP.

- Obtain a “no objection” letter from his or her home country if the home government funded his or her exchange program.
- Agree to begin employment at the health care facility within 90 days of receipt of the waiver, not the date his or her J-1 visa expires.

The following are specific to the State of Alabama:

- Practice Areas: Family, General, OB/GYN, Pediatrics, Psych, Internal Med
- Specialists: Yes; up to 15 specialists may be awarded waivers once all primary care needs are met.
- Application Review: Hospitals in the Alabama State Rural Health Plan and Alabama employers in non-Metropolitan Statistical areas can submit applications for sub-specialists on the first work day of October; Other Alabama sub-specialist employers can submit applications the first Monday of the first full work week the following January until all spaces are filled.

Notes: The physician must submit documentation that he/she tried all other Alabama state waiver programs first, employer contracts cannot contain non-compete clauses, must include a specified liquid damages clause, and must incorporate all the terms and conditions of the Alabama Waiver Program. Alabama Department of Public Health’s roles are to establish policies and procedures in coordination with appropriate health authorities, review and processing of waiver applications and monitoring compliance with the program.

### **Moonlighting (H-1B only)**

Residents on an H-1B visa may moonlight (concurrent employment). H-1B status permits a foreign national to work for several employers concurrently, under certain circumstances. Departments should consult with OI for information when a foreign national is considering concurrent employment due to the detailed nature involved.

### **Fees**

The filing and processing fees for an H-1B petition with USCIS must be paid by the USA/USA Health department to the Department of Homeland Security. There is no fee waiver. Payments must be made by check or money order originating from a banking institution located in the United States and payable in U.S. currency. The payment must be addressed to the “Department of Homeland Security.” The hiring department will pay the \$460 I-129 filing fee, the \$500 anti-fraud fee, and, if requested, the \$2,500 premium processing fee, as well as any attorney handling fees.

### **Dependents**

Dependents of H-1B visa holders are classified under the H-4 category. H-4 visa holders can engage in incidental study. Generally, H-4 nonimmigrants are ineligible to work in the United States. However, certain H-4 dependent spouses of H-1B

nonimmigrants who are seeking employment-based lawful permanent resident (LPR) status are permitted to apply to USCIS for an Employment Authorization Document (EAD) that will allow them to work in the United States.

H-4 dependent spouses are eligible to apply for an EAD under this rule only if their H-1B spouse:

1. Is the principal beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker; or
2. Has been granted H-1B status under section 106(a) and (b) of the American Competitiveness in the Twenty-First Century Act of 2000, as amended (That Act permits certain H-1B nonimmigrants seeking lawful permanent residence to work and remain in the United States beyond the six-year limit on their H-1B status).

Under the rule, eligible H-4 dependent spouses must file Form I-765, Application for Employment Authorization, with supporting evidence and the required filing fee in order to obtain employment authorization and receive a Form I-766, Employment Authorization Document (EAD). Once USCIS approves the Form I-765 and the H-4 dependent spouse receives an EAD, he or she may begin working in the United States. H-4 spouses who do not meet the regulatory conditions described above, and H-4 children, are not eligible to apply for an EAD.

### **Termination**

If employment of an H-1B is terminated by the University, reasonable cost to return the foreign national to the last place of residency prior to entering the U.S. is the responsibility of the hiring department. If the foreign national voluntarily resigns, or refuses payment for return to last place of residence, the burden of cost will not be paid by the University or host department. OI requires signed documentation by the foreign national and department head stating that the payment has been refused, or the individual has resigned voluntarily.

## **H-1B Specialty Occupation Department Checklist**

1.  USA/USA Health department notifies OI of their intention to sponsor a foreign national for H1B employment.
2.  OI will determine if the foreign national will require any special handling.
3.  If the foreign national is eligible for sponsorship OI will begin an immigration file.
4.  The sponsoring department contact Human Resources about posting job position.
5.  The sponsoring department contact the appropriate department (Academic Affairs, HCM, Postdoc Education) to make a job offer
6.  A background check is initiated.
7.  The sponsoring department makes a determination if premium processing will be required. The sponsoring department should expect to pay \$2,500.
8.  Offer letter is sent to the foreign national from the President's Office or College of Medicine.
9.  Complete H-1B Application packet (initial and extension). Appendix A and B along with the actual wage determination should be sent as soon as they are completed.
10.  Submit supporting documents with a completed H-1B Application packet to OI.
11.  Post two labor condition application notices at department's location.
12.  Complete and submit Application for Prevailing Wage Determination, Form ETA-9141 with the U.S. Department of Labor. Or, access information at the Foreign Labor Certification Data Center Online Wage Library. (OI will complete this step)



13.  Submit Labor Condition Application (LCA) for Nonimmigrant Workers, ETA Form 9035 with the U.S. Department of Labor. (OI to complete this step)
14.  Department returns completed posting notices for LCA with a posting certification. Posting must be up for a minimum of 10 business days.
15.  Pay USCIS required fees.
  - a. \$460.00 - Form I-129, H-1B petition. Make check payable to U.S. Department of Homeland Security.
  - b. \$500.00 - Fraud Prevention and Detection. Submitted in a separate check payable to U.S. Department of Homeland Security.
  - c. \$2,500 - Form I-907, Premium Processing, (if applicable) Submitted in a separate Check payable to U.S. Department of Homeland Security.
  - d. \$2000.00 approximate immigration attorney handling fees (if applicable).
16.  OI receives checks from department or Accounts Payable processes payment for immigration attorney.
17.  OI submits an H-1B petition to USCIS.
18.  USCIS will either approve, request additional evidence, send a Notice of Intent to Deny (NOID), or issue a denial.

## **J-1 EXCHANGE VISITOR**

The J Exchange Visitor category was developed to implement the Mutual Educational and Cultural Exchange Act of 1961. The Department of State maintains regulations guiding the implementation of this act and its overall purpose. The objective of the Exchange Visitor category, is to increase mutual understanding between the people of the United States and the people of other countries by the exchange of education and culture. The J-Exchange Visitor program is a non-immigrant program, and J-Visa holders should have no intent to permanently remain in the United States. This visa category should **not** be used by departments or foreign nationals for permanent employment or tenure track positions or to seek Permanent Residency in the United States.

The J-1 category is for persons who are coming to the U.S. for an exchange visitor program in a variety of areas, such as study, long-term research, short-term research, teaching, or training. USA and USA Health authorize the J-visa category only for professors, research scholars, short-term scholars, and students. The Student and Exchange Visitor Information System (SEVIS) Form DS-2019 is the document issued by the Office of Immigration to any person approved by the University for a J-1 program. The application for J-1 Visiting Scholar is for applicants in all J-1 professional categories.

### **Eligibility Requirements**

There are a few basic requirements for all J-1 Exchange Visitors:

1. Intent to pursue appropriate activity (such as research or teaching)
2. Intent to return to home country (as determined by consular officer)
3. Sufficient funding for program – minimum \$1,500 per month; an additional \$750 per month for spouse; and, \$500 per child in accordance with the Office of Immigration policy
4. Appropriate background for program activity (i.e. the J-1 Exchange Visitor meets appropriate degree requirements)
5. Adequate English proficiency is required for all applicants who are non-native English speakers or who are not residents/citizens of a country where English is an official language. The applicant must submit either exam results from a recognized English exam (i.e. TOEFL, IETLS, etc.); submit signed documentation from an academic institution or English language school confirming proficiency; or be evaluated by the USA/USA Health host department for their English language proficiency).

## **J-1 Exchange Visitor Short-Term Scholar Category**

### **Purpose and Background**

Short-Term Scholar is reserved for a foreign national who is a professor, research scholar, or person with similar education or accomplishments who enters the United States for a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills. Normally, a participant in this category will be involved in some form of educational enrichment. They may collaborate on special research projects, teach a semester, lecture, consult, or observe during their stay. Short-term should be considered if the foreign national will only stay temporarily and has no desire to emigrate from their home country to the United States. Also, if there is no desire by the host department to sponsor the individual for long-term or permanent residency, short term may be the best option. Upon completion of program, the foreign national must exit the U.S.

### **Length of Stay**

Length of stay can be from a minimum of one day to the maximum allowable stay of six months. No program extension is allowed per the Department of State. If a program is expected to last more than six months, consideration should be given to inviting the foreign national in another category under the J-1 visa.

### **Key Information**

- Cannot be a candidate for a tenure track position at USA or USA Health
- Maximum allowable stay is six months
- Extensions beyond six months are not permitted
- Scholar should have no plans to continue beyond six months
- Stay can be anywhere from one day to six months
- A short-term scholar is only permitted to participate in activities stated on his or her Form DS-2019 issued by the Office of Immigration (OI).
- A short-term scholar may engage in activities that constitute occasional lectures or consultations with written authorization and approved by OI.
- Employment deemed as moonlighting is strictly prohibited (no outside employment within or outside a USA or USA Health department)

## **J-1 Exchange Visitor – “Long-Term”**

### **Purpose and Background**

A long-term scholar must be a professor, research scholar, specialist, alien physician (J-1 ECFMG), student intern, or university student. Foreign nationals may be sponsored by a USA or USA Health department as exchange visitors if they will be participating in a program that furthers the following objectives with compatible activities:

- **Professor.** A foreign national whose primary purpose is teaching, lecturing, observing, or consulting at post-secondary accredited academic institutions,

museums, libraries, or similar types of institutions. A professor also may conduct research where authorized by the sponsor.

- **Research scholar.** A foreign national whose primary purpose is conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited academic institutions, or similar types of institutions. A research scholar also may teach or lecture where authorized by the sponsor.
- **Specialist.** A foreign national who is an expert in a field of specialized knowledge or skills who enters the United States for the purpose of observing, consulting, or demonstrating special knowledge or skills.
- **Alien physician (J-1 ECFMG).** A foreign national who is a graduate of a school of medicine outside the U.S. who comes to the United States under a program in which he or she will receive graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions.
- **Student Intern.** A foreign national participating in a structured and guided work-based internship program in his or her specific academic field. Is currently enrolled full-time in and actively pursuing studies at a foreign ministerial-recognized degree- or certificate-granting post-secondary academic institution outside the United States. Or, graduated from such an institution no more than 12 months prior to the exchange visitor program begin date reflected on Form DS-2019 issued by OI.
- **University Student.** A foreign national who is pursuing a full course of study in the United States.

### Length of Stay

Length of stay varies by classification.

- J-1 Professors and research scholars have a minimum of 3 weeks and a maximum of 5 years. There are no extensions beyond 5 years.
- J-1 Specialists have a minimum of 3 weeks and a maximum of one year stay. There are no extensions beyond 12 months.
- J Student Interns have a maximum duration of 12 months for the internship program.
- J-1 ECFMG duration of stay is normally limited to the time it takes to complete a program with a maximum allowable stay of seven years. Extensions can be requested if the foreign national can demonstrate that the country to which he/she will return at the end of additional specialty education or training has an exceptional need for an individual with such additional qualifications.

### Key Information

J-1 scholars:

- Cannot be a candidate for a tenure track position. The J-1 category does not allow immigrant intent;

- Should not have participated in and completed a professor or research scholar program within the last 24 months preceding the beginning date of their new program. The foreign national may be subject to 212(e) (a two-year home residence requirement);
- Should not have participated in a J-Visa program (J-2 included) for all or part of the 12-month period immediately preceding the start date of a professor or research scholar program unless they meet one of the following exceptions:
  - The participant is currently in the United States as a professor or research scholar and will transfer to South to continue their current J-1 program;
  - The foreign national's previous physical presence in the U.S. on a J-Visa program was less than six months in duration; and the prior participation was as a short-term scholar.

### **Moonlighting**

J-1 Scholars are not permitted to moonlight under any circumstance. The Department of Homeland Security strictly forbids the practice of outside employment by J-1 Visa holders.

### **Host Department**

The host department will:

- Screen and select qualified foreign nationals to participate in the program;
- Monitor the visitor's stay while in the United States and assist with any issues that may occur;
- Make sure the foreign national is engaging in activities directly related to the purpose of the visit;
- Allow the exchange visitor to be involved in cross-cultural activity;
- Ensure all exchange visitors and dependents have health insurance coverage during their entire stay in the U.S., even before and after the program; and
- Possess adequate finances to support their stay, and to support their spouse and dependents, if applicable.
- If applicable, submit a detailed training plan using U.S. Department of State Training/Internship Placement Plan, Form DS-7002.
- Assist exchange visitor in finding housing, arrange airport transportation, etc.

### **Dependents**

Dependents of J-1 visa holders are classified under the J-2 category. J-2 visa holders can engage in incidental study and employment.

### **Termination**

If the department or scholar terminates employment, OI must be notified immediately. Any changes to employment dates must be reported to the Student and Exchange Visitor Program.

<b>J-1 Scholar Department Checklist</b>	
<b>Exchange Visitor</b>	
	Complete <a href="#">J-1 Scholar Application</a> and submit with supporting documents to sponsoring department:
	Supporting Documents: <ol style="list-style-type: none"> <li>a. CV/Resume</li> <li>b. Biographical Page of Passport</li> <li>c. Proof of Insurance (translated to English)</li> <li>d. Proof of English Proficiency</li> <li>e. Proof of Financial Support (bank statement; scholarship; grant...)</li> <li>f. Invitation Letter from Department</li> <li>g. Appointment Letter (Academic Affairs; USA HCM; Postdoc)</li> </ol>
	Current immigration documents if in the U.S. Include current I-94
	If already in the U.S. in J-1 status, complete a <a href="#">J-1 Scholar Transfer-In Request</a>
	If bringing dependents, include their passport, proof of sufficient funding, and proof of insurance
<b>Sponsoring Department</b>	
	Complete appropriate sections of J-1 Scholar Application
	Request processing and a background check from Human Resources; Academic Affairs, Postdoc, or USA HCM (use appropriate department). Allow 4-6 weeks.
	Complete invitation letter from department chair
	Provide department's FOAPAL number
	Notify April Pate, Payroll of start date (if applicable)

## **J-2 DEPENDENT EMPLOYMENT AUTHORIZATION**

### **Purpose and Background**

J-2 dependents of a J-1 exchange visitor may apply to the United States Citizenship and Immigration Services (USCIS) for permission to accept employment provided the income received is not needed for the support of the J-1 exchange visitor. If approved, the dependent will receive an employment authorization document (EAD).

### **Length of Employment**

If authorized, J-2 dependents can work until the end of the J-2's period of stay as noted on the DS-2019. However, the J-2 EAD is only valid if the J-1 exchange visitor's status is valid.

### **Key Information**

- The J-2 cannot re-enter the United States using only the EAD card. They must be in possession of a valid passport, valid J-2 visa, and valid DS-2019 signed by the Office of Immigration.
- Any income earned by the J-2 dependent is subject to taxes unless a tax treaty will apply.
- The income received by the J-2 dependent cannot be for financial support of the J-1 exchange visitor.
- OI will assist interested J-2 dependents with information on how to petition for work authorization with USCIS.
- What effects the J-1 principal also effects the J-2 dependent – including the 212(e) two-year home residency requirement.

## **O-1 ALIEN OF EXTRAORDINARY ABILITY OR ACHIEVEMENT**

### **Purpose and Background**

The O-1 nonimmigrant visa is reserved for foreign nationals who possess extraordinary ability in the sciences, arts, education, business, or athletics. One may have heard it referred to as the “genius visa.” In addition, this individual has often been recognized nationally or internationally for those achievements evidenced in their field of study through extensive documentation. Extraordinary ability signifies a high level of expertise, and that the foreign national is one of a small percentage of individuals who have risen to the top of their respective field of study. All O-1 petitions must be processed through a University-approved immigration attorney at the expense of the hosting department.

### **Length of Stay**

The O-1 visa has an initial period of stay up to 3 years. Extensions in one-year increments are allowed thereafter with no maximum cumulative duration limit.

### **Dependents**

Dependents of O-1 visa holders are classified under the O-3 category. O-3 visa holders can engage in incidental study, but cannot engage in employment.

### **Key information**

- Foreign nationals subject to 2-year residence requirement are eligible for O-1 classification. However, a person cannot change from J status to O status within the United States. They must depart the U.S., apply for an O visa abroad and re-enter the U.S. in O-1 status.
- Employment is limited to the specific employer who sponsored the O visa and the employment specified on the I-129 petition. Concurrent O visas are not allowed.
- Heavy documentation is required. A Department of State advisory opinion must be obtained and numerous letters from peers in the field supporting and describing the foreign national’s outstanding abilities.
- New graduates and those with few professional publications will most likely be excluded.
- The O-1 is not like the H-1B where the foreign national has to fulfill the 212(e) requirement or receive a waiver in order to process the O-1 petition. However, if the foreign national plans to reside in the United States for a long period of time, and the department wants to move forward with sponsoring a Permanent Residency petition, the 212(e) must be satisfied first, or the individual must have a waiver of the 212(e).



**Termination:** If employment is terminated for any reason other than voluntary, the host department is responsible for the cost associated with returning the foreign national to the last place of residence prior to entering the United States. If the foreign national refuses the payment, it must be noted in writing and signed by the department head and O-1 visa holder.

## TN NAFTA Professional

### **Purpose and Background**

The TN category allows Canadian and Mexican citizens to enter the United States in order to undertake in professional activities on a temporary basis. The category was developed as part of the North American Free Trade Agreement (NAFTA). NAFTA has designated 63 professions that qualify for the TN category.

Only a few are particularly useful for USA and USA Health:

- **Teacher**: This category can only be used for teachers entering the United States to work for a university, college or seminary. They must possess relevant baccalaureate or licenciatura degrees. Since the TN applicant must show that their stay is temporary, the TN category is not recommended for tenure-track faculty who plan to apply for lawful permanent residence.
- **Scientist**: Scientists seeking TN status must have either a baccalaureate or a licenciatura degree in the appropriate field. This category covers a broad range of scientific fields that may be useful to academic and research institutions. See 9.B.9 Appendix 1603.D.1 of Annex 1603 of the NAFTA for the full list.
- **Research Assistant**: As a Research Assistant, an individual must be entering the United States to conduct research for a postsecondary educational institution. To qualify for the profession, the individual must possess a baccalaureate or licenciatura degree in the relevant field of study.
- **Scientific Technician/Technologist**: An individual in the Scientific Technician/Technologist category must be seeking temporary entry for work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics. No specific degree is required for this occupation., but it must be shown that the person has theoretical knowledge and ability to solve practical problems or perform basic or applied research in one of those disciplines. Section 15.5(f)(2)(A) of the CBP Inspector's Field Manual states that the theoretical knowledge "should generally have been acquired through the successful completion of at least two years of training in a relevant educational program." The IFM also states that the job offered "must demonstrate that the work of the ST/T will be inter-related with that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work."
- **Medical/Allied Professionals**: This category encompasses many occupations that are useful to universities and medical institutions. A few examples are Dentist, Medical Technologist, Pharmacist, Physician (teaching or research only), Psychologist, and Registered Nurse.

- **Computer Systems Analyst:** An individual applying for TN status as a Computer Systems Analyst must possess a baccalaureate or licenciatura degree or a credential issued after at least two years of post-secondary education. BCIS currently interprets this title to not include computer programmers. The legacy INS NAFTA Handbook stated the following: "The computer systems analyst category does not include programmers. A systems analyst is an information specialist who analyzes how data processing can be applied to the specific needs of users and who designs and implements computer-based processing systems. Systems analysts study the organization itself to identify its information needs and design computer systems that meet those needs. Although the systems analyst will do some programming, the TN category has not been expanded to include programmers."

### **Length of Stay**

Canadians and Mexicans can be granted an initial stay of up to 3 years. Extensions can also be granted in up to 3-year increments. There is no cumulative total limit on the time TN visa holders can be in TN status. Status can be renewed each year indefinitely as long as the nature of the stay remains temporary in nature. USA Main Campus employees are limited to one-year extensions per institutional policy.

### **Dependents**

Dependents of TN visa holders are classified under the TD category. TD visa holders can attend school full-time or part-time, but they may not engage in employment.

### **Key Information**

- Non-Canadian dependents of Canadian citizens under 21 years of age require a TD visa. They must apply for TD status at a U.S. Embassy prior to admission to the United States. Their visa application should include the TN's letter of employment, a copy of the TN's I-94 (if already in the U.S.), and a copy of the marriage or birth certificate.
- Non-Mexican dependents are required to obtain a TD visa unless from a country that is exempt from the visa requirement. Mexican dependents of TN visa holders should apply for their visa at the same time as the TN. If they must apply at a later date, they will need to present a letter of employment for the TN, an approved I-797, and a copy of the marriage or birth certificate.
- Action to extend or change the TN nonimmigrant status does not always change the TD dependent status.
- There is no fee required for TD applications at the port-of-entry.
- A Mexican citizen must obtain a TN visa from a U.S. consulate before being eligible to apply for admission to the United States in TN status.
- A Canadian citizen does not require a TN visa. Canadians can present the required supporting documentation at a U.S. port-of-entry, and is admitted directly in TN status.

- Entry must be temporary in nature.
- The foreign national must be Canadian or Mexican citizen.
- The foreign national must possess the minimum qualifications of one of the professions listed in NAFTA Appendix 1603.D.1.
- Job must constitute pre-arranged professional activity.
- Permanent residents of Canada or Mexico do not qualify

### **Termination**

Contact OI if employment is terminated by employer or student.

## VISA WAIVER PROGRAM (VWP)

### **Purpose and Background**

VWP allows certain citizens from specific countries to travel to the United States for tourism or business for stays up to 90 days without first obtaining a visa. Travelers must have a valid Electronic System for Travel Authorization (ESTA) approval prior to travel. VWP traveler may still apply and obtain a B visa if they prefer.

Citizens of the following countries are currently eligible to travel to the United States under VWP:

Andorra	Hungary	Norway
Australia	Iceland	Portugal
Austria	Ireland	San Marino
Belgium	Italy	Singapore
Brunei	Japan	Slovakia
Chile	Latvia	Slovenia
Czech Republic	Liechtenstein	South Korea
Denmark	Lithuania	Spain
Estonia	Luxembourg	Sweden
Finland	Malta	Switzerland
France	Monaco	Taiwan
Germany	Netherlands	United Kingdom*
Greece	New Zealand	

Note: \*British citizens must have unrestricted right of permanent abode in England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man.

**Electronic System for Travel Authorization (ESTA):** In order to travel without a visa on the VWP, you must have authorization through ESTA prior to boarding a U.S. bound air or sea carrier. ESTA is the Department of Homeland Security (DHS), Customs and

Border Protection's (CBP) automated web-based system to determine eligibility to travel without a visa to the United States for tourism or business.

### **Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015**

Under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, travelers in the following categories are no longer eligible to travel or be admitted to the United States under the Visa Waiver Program (VWP):

- Nationals of VWP countries who have traveled to or been present in North Korea, Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country).
- Nationals of VWP countries who are also nationals of North Korea, Iran, Iraq, Sudan, or Syria.

Individuals affected by the Act will still be able to apply for a visa using the regular appointment process at a U.S. Embassy or Consulate.

### **Travel Purposes Not Permitted on Visa Waiver Program**

The following are examples of activities not permitted on the VWP and require visas for travel to the United States:

- Study, for credit
- Employment
- Work as foreign press, radio, film, journalists, or other information media
- Permanent residence in the United States

### **Length of Stay**

Up to 90 days without a visa. VWP entrants are not eligible for an extension of stay or for a change of their status once in the United States.

### **Key Information**

- Nationals of any VWP country who traveled to, or been present in North Korea, Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen on or after March 1, 2011 are not eligible to travel to the United States.
- Foreign nationals of a VWP country who are also nationals of North Korea, Iran, Iraq, Sudan, or Syria are not eligible to travel to the United States.
- As of January 21, 2016 ESTA travelers who have previously held nationality in any status with North Korea, Iran, Iraq, Sudan, or Syria had their ESTA revoked.
- Persons subject to VWP restrictions and revocations can still apply for a B visa using the regular appointment process at a U.S. Embassy or Consulate, but will no longer be eligible for VWP.

- The travel must have a valid ESTA.
- Must possess a valid machine readable passport with biometric identifiers.
- Have in their possession a return trip ticket.
- The VWP participant must waive their right to appeal a denial of entry or order of removal.

## **Employment-Based (EB) Immigration (Permanent Workers)**

### **Purpose and Background**

Every fiscal year, approximately 140,000 EB immigrant visas are made available. Qualified immigrants who meet certain specific criteria can apply under the provisions of U.S. immigration law. Foreign nationals who are granted EB immigrant status are considered permanent workers who may be able to live in the U.S. on a permanent basis. USCIS has divided the EB immigrant visa into five categories. Each category is reserved for foreign nationals of certain abilities, education, skill, and work experience. To be considered for an EB immigrant visa, the University, if required, must obtain a labor certification approval first issued by the U.S. Department of Labor. Once USA receives the labor certification, OI must file an Immigrant Petition for Alien Worker, Form I-140 with USCIS specifying the appropriate EB category.

The five EB categories are discussed below.

#### **1. EB-1, First Preference (Priority Workers)**

EB-1 applicants must be the beneficiary of an approved Form I-140 filed with USCIS, even if the foreign national has self-petitioned. However, none of the three sub-groups under EB-1 are required to have an approved labor certification from the U.S. Department of Labor. A foreign national may be eligible for EB-1 if they meet the standards of one of the subgroups.

- a. **Extraordinary Ability:** Applicant must have extensive documentation showing sustained national or international acclaim and recognition in their field of expertise, and must meet 3 of the 10 criteria listed in the criteria section below. No job offer is required if applicant is entering the U.S. to continue work in their respective field. Applicants are allowed to self-petition as long as it is in the interest of the U.S.
- b. **Outstanding Professors and Researchers:** Must have at least three years-experience in teaching or research, be recognized internationally, and be able to provide documentation of at least two listed below. Applicants in this category must be coming to the U.S. to pursue tenure, tenure track teaching, or a comparable research position at a university or other institution of higher education. The prospective employer must provide a job offer and file an Immigrant Petition for Alien Worker, Form I-140, with the USCIS.
- c. **Multinational Managers and Executives:** Reserved for foreign nationals who have been employed for at least one of the three preceding years by the overseas affiliate of a multinational corporation based out of the U.S. The foreign national must have been in a managerial or executive capacity, and will continue as such in the United States.



## **Criteria for Demonstrating Extraordinary Ability (EB-1 with Extraordinary Abilities)**

You must meet 3 out of the 10 listed criteria below to prove extraordinary ability in your field:

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
- Evidence of your membership in associations in the field which demand outstanding achievement of their members
- Evidence of published material about you in professional or major trade publications or other major media
- Evidence that you have been asked to judge the work of others, either individually or on a panel
- Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
- Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
- Evidence that your work has been displayed at artistic exhibitions or showcases
- Evidence of your performance of a leading or critical role in distinguished organizations
- Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
- Evidence of your commercial successes in the performing arts

## **Examples of Documentary Evidence for an Outstanding Professor or Researcher (EB-1 Outstanding Professors and Researchers)**

- Evidence of receipt of major prizes or awards for outstanding achievement
- Evidence of membership in associations that require their members to demonstrate outstanding achievement
- Evidence of published material in professional publications written by others about the alien's work in the academic field
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
- Evidence of original scientific or scholarly research contributions in the field
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

2. EB-2, Second Preference, Advanced Degrees and Persons of Exceptional Abilities

In general, EB-2 applicants must have an approved labor certification issued by the U.S. Department of Labor. The EB-2 applicant must have a valid job offer from the University, and USA/USA Health is required to file an Immigrant Petition for Alien Worker, Form I-140 on behalf of the applicant. A foreign national who possesses certain criteria that may be in the national interest of the United States may apply for an exemption known as a National Interest Waiver (NIW). An applicant who has filed for an NIW can self-petition by filing the Form I-140, and providing evidence to support national interest. EB-2 has two subgroups: professional holding an advanced degree; and, persons with exceptional ability.

- a. Professional holding an advance degree are foreign nationals who possess a degree beyond baccalaureate, or a baccalaureate degree and at least five years of progressive experience in their profession.
- b. Persons with exceptional ability are foreign nationals who possess expertise significantly above that ordinarily encountered in their profession.

3. EB-3, Third Preference, Skilled Workers, Professionals, and Unskilled Workers

EB-3 applicants normally require a standard labor certification from the Department of Labor, as well as an approved Immigrant Petition for Alien Worker, Form I-140, filed by the University. Special recruitment options may be available for college teachers; however, most such positions require an advance degree. EB-3 category has three subgroups listed below.

- a. Skilled Workers must be able to demonstrate 2 years of job experience or training. Applicant must be performing work for which no qualified U.S. workers are available.
- b. Professionals must possess a U.S. baccalaureate degree or foreign degree equivalent. A baccalaureate degree must be a normal requirement for entry in the profession.
- c. Unskilled workers, also classified as “other workers” are foreign nationals who have the ability to fill a position that requires less than two years training or experience, but are not considered temporary or seasonal workers. The unskilled labor must be of such that qualified laborers are not available in the United States.

#### 4. EB-4, Fourth Preference

An EB-4 applicant must be the beneficiary of an approved Petition for Amerasian, Widower, or Special Immigrant. To petition for employment-based fourth preference, USA must file a Form I-360, Petition for Amerasian, Widower, or Special Immigrant. The following special immigrants are eligible for EB-4:

- Religious Workers (non-minister special immigrant program expired on 09/30/2016)
- Special immigrant juveniles
- Broadcasters
- G-4 International Organization; or, NATO-6 Employees and their family members
- International employees of the U.S. government abroad
- Armed forces members
- Panama Canal zone employees
- Certain physicians
- Afghan and Iraqi translators
- Afghan and Iraqi nationals who have provided faith services in support of U.S. operations

#### 5. EB-5, fifth preference, Immigrant Investor Program

The EB-5 category is administered by USCIS. Under this program, foreign investors and entrepreneurs can make capital investments in new commercial enterprises in the U.S. which provide job creation.

This category was created by congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors.

### **Eligibility for Adjustment of Status**

EB-1, EB-2, and EB-3 are eligible for adjustment of status (“green card”). Foreign nationals must meet certain requirements to qualify.

### **Dependents**

Spouses and minor, unmarried children under the age of 21 may apply for immigrant visas with the primary applicant based on the approved petition. Dependents must also complete all required application forms, obtain all necessary documents, and complete medical examinations. Same-sex spouses are eligible for the same benefits.

## Required Documentation

The applicant can expect to provide the following documents, in general:

- Passport valid six months beyond the projected date of entry into the U.S.
- Form DS-260, Immigrant Visa and Alien Registration Application
- Two 2X2 photographs
- Civil documents for the applicant
- Financial support that will demonstrate you will not become dependent upon the U.S. government for general living expenses
- Completed medical examination forms done prior to visa interview. Medical examination must be completed by an authorized panel physician

## Key information

- EB immigrant visas application processing take additional time because of the numerical limitation of how many visas can be issued annually in this category. The length of time will vary case by case and cannot be predicted.
- Any willful misrepresentation by the foreign national of a material fact or fraud may result in the individual becoming permanently ineligible to receive any U.S. visa in the future.
- A foreign national can be deemed ineligible for a U.S. visa due to certain activities or conditions. These include: drug trafficking, overstaying a previous visa, falsifying documents, and past criminal records.

## Special Handling PERM (Program Electronic Review Management)

PERM *is not* the same as permanent resident. PERM refers to the Program Electronic Review Management (PERM) system used to process labor certifications. Filing a labor certification application with the U.S. Department of Labor is the first step in obtaining an EB-2 or EB-3 immigrant visa. Special Handling PERM is designed to streamline the labor certification process for colleges and universities who desire to hire a foreign national to fill a teaching position. The University is still required to show that there are no qualified or willing U.S. workers available to perform the job.

Special Handling is reserved for tenured tracked teaching positions. The position must involve some amount of actual classroom teaching, but the teaching duties can be less than 50% of the total working hours. In general, non-teaching positions such as librarians, researchers, and administrative staff who engage in tenure track teaching duties may be eligible for Special Handling.

Key information to consider:

- The position must involve tenured tracked teaching

- Filing must take place within 18 months after the final selection decision is made
- The recruitment procedure must be extensive and well-documented
- The position must have been posted in one hard copy professional journal or for 30 calendar days in an electronic online posting.
- The advertisement must contain job duties, title, and requirements (wage offer not required)
- A printed version of the advertisement from the first day to the last day must be maintained to show proof of the online job posting
- Internal posting must be posted for a minimum of 10 business days

List of steps for Special Handling PERM:

1. The department at USA/USA Health must conduct recruitment efforts prior to making a selection.
2. The application must be filed within 18 months from the date the selection for the position was made.
3. The job position must have been advertised for in a national professional journal or its online electronic equivalent during the recruitment process before selection. The ad must identify a specific job title, duties, and job requirements (wage not required).
4. The recruitment process must be outlined in a detailed statement and signed by a college or university official. The official must have hiring authority. The detailed statement must include how many applicants applied for the position, and specific, job-related reasons why the foreign national was more qualified than their U.S. worker counterpart who applied for the same job position.
5. At the conclusion of the selection process, a final report must be written by the administrative committee responsible for the final recommendation or selection of the foreign national.
6. A written declaration of the foreign national's qualifications for the position. The attestation will include such information as education, experience, and achievements.
7. An internal job posting, Notice of Filing must be posted at the work location, (breakroom, bulletin board...) to announce the filing of the application. The posting must remain for 10 consecutive business days.

**Termination**

If employment is terminated by employer or scholar, OI must be contacted immediately. EB status is dependent upon continue employment by a sponsor. Termination of employment while EB petition is pending will result in a revocation of petition.

## **LEGAL PERMANENT RESIDENCE (“GREEN CARD”)**

### **Background and Purpose**

A Permanent Resident is a foreign national who has been authorized to work in the United States long term and on a permanent basis. Institutions file lawful permanent resident (LPR) petitions for those professors, researchers, and other employees whom they wish to employ beyond the time limits permitted in nonimmigrant classifications. The ability and willingness of the institution to file such petitions sometimes become bargaining chips in recruiting or retaining highly qualified and competitive international talent.

Employment-based LPR petitions require a labor certification through the Department of Labor and a petition filing with DHS based on that labor certification. Persons who are extraordinary or outstanding in their fields or whose work is in the national interest may claim and sometimes receive exemption for the labor certification.

### **Length of Stay**

The initial authorization is 10 years and renewable indefinitely.

### **Maintaining Permanent Residence**

Once a foreign national becomes a permanent resident, they must maintain their permanent status until completion of the naturalization process. However, their permanent resident status can be terminated or abandoned by the green card holder. Several ways a foreign national can lose their green card are:

1. An individual with Conditional Permanent Resident status could lose their status if evidence is found to indicate the person has engaged in fraud to obtain status.
2. An immigration judge issues a final removal order against the green card holder for legal reasons.
3. A foreign national can also lose their green card status if they have been found to intentionally abandon it. The following are examples of intentional abandonment of green card status:
  - a. Moving to another country to seek permanent residence
  - b. Remaining outside of the United States for an extended period of time.
  - c. Failing to file income tax returns while residing outside of the United States.
  - d. Failing to file income tax returns while residing inside the United States.
  - e. Declaring yourself a nonimmigrant on your U.S. tax returns.