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# California State University, Los Angeles

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## Employment Sponsorship Handbook

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International Office

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## INTRODUCTION

While a foreign national may apply for jobs at Cal State L.A. and can be offered employment, that individual may not work in the U.S. unless approval for employment authorization is given by the U.S. Department of Homeland Security. If a department plans to hire a foreign national who currently does not have permission to work in the U.S., Cal State L.A. must sponsor the individual in an appropriate visa category for employment. Even if the foreign national is currently employed in the U.S., that employment authorization may be employer specific, requiring Cal State L.A. to sponsor this individual for employment authorization.

When a Cal State L.A. department or other unit wishes to employ a non-immigrant, the International Office should be consulted to discuss the possibility and/or requirements of a University sponsor for employment authorization. There are multiple options available, depending on the non-immigrant's situation.

These guidelines are to help clarify requirements and to outline the procedure for Cal State L.A. to sponsor a non-immigrant employee. International Office assists by advising on regulations and appropriate actions for the department and potential employee; reviewing documents prepared by the attorney; ensuring compliance with Cal State L.A.'s policy, procedure, and format; obtaining necessary signatures; and providing status reports.

**Only the International Office is authorized to sign immigration documents on behalf of Cal State L.A. Unauthorized signatures can result in the denial of the petition.**

Currently, non-immigrant employment sponsorship petitions are being processed by the International Office and private attorneys, depending on the non-immigrant employee's situation. While there is no charge by the International Office to process the sponsorship petitions, the non-immigrant employee is responsible for all filing fees associated with said petition. If the case is referred to an outside attorney, the non-immigrant employee is also responsible for said attorney's fees. All correspondence by the attorney should be directed to the International Office.

## H-1B SPECIALITY OCCUPATION

### Government Regulations

H-1B is an employment-based visa category for an individual coming temporarily to perform services in a specialty occupation. A specialty occupation is one which requires the theoretical and practical application of a body of highly specialized knowledge requiring completing of a specific course of higher education. The minimum requirement is a baccalaureate degree, or its equivalent, and the field of the degree must be related to the position.

Under current regulations, H-1B status is granted for an initial period of three years, with a three-year extension possible, for a maximum duration of six years. An extension of H-1B status beyond the six year maximum period is possible under certain circumstances. *Cal State L.A. policy requires the initial petition for tenure track faculty be only two years, in accordance with the offer letter's probationary period.*

The H-1B petition is employer specific. The H-1B beneficiary (non-immigrant employee) can only be employed by, and paid by, the employer who petitioned for H-1B status on his/her behalf. In addition, the beneficiary can only be employed in the specific job duties as stated in the H-1B petition. The employment-based staff at the International Office must be contacted if any changes in the position or duties are anticipated. An amended H-1B petition must be filed with the USCIS if the changes are significant.

### Who Qualifies?

Cal State L.A. will support H-1B status for an alien who has been offered a tenured-track or full-time temporary position as a faculty member, or other professional who is critical to the institution's academic mission.

The University Auxiliary Service and University Student Union are separate employers. These policies are directed only to Cal State L.A. offices and departments.

## NEW CASES

### Procedures

To begin the process of obtaining the H-1B status, the Department Contact should get in touch with the International Office as early as possible. Following the consultation, you will be sent a startup packet by email. It is also available on the International Office's website. You should submit the documents to International Office promptly.

The following are considered new cases: a "free-floating" (also known as "loose") H-1B petition, a change of status to H-1B, and a change of H-1B employer petition. Generally, a free-floating H-1B petition is one that is filed with the USCIS for an individual coming directly to Cal State L.A. from outside of the United States. Change of status cases are those in which the applicants are already in the U.S. but are holding another status (ie: F-1). Change of employer cases are those in which the applicants are already in the U.S. and hold H-1B status with another U.S. employer.

The Initial Package includes:

***From the College/Department***

- University Sponsor of a Non-Immigrant Employee
- Employment Visa Sponsor Compliance Requirements
- Copy of job description
- Copy of offer letter
- Copy of CSU Salary Schedule of the position category
- \$500 check from College payable to “U.S. Department of Homeland Security”

***From the international employee:***

- Non-immigrant Employee Bio-Data Form
- H-1B Employee Statement signed by non-immigrant employee
- Resume/C.V. of non-immigrant employee
- Copy of diploma and/or license required for the position
- Application fee for I-129 (if the petition is being processed by the International Office)

The department should submit the package complete with the list of required documents to the International Office.

### **Employee Taken Off Payroll**

If there is a gap period between employment authorizations, the employee must be taken off payroll until the H-1B petition is approved. For example, the F-1 OPT employment authorization document (EAD) has expired and the requested change to H-1B status has not been approved yet. Furthermore, the employee is NOT permitted to serve in any volunteer capacity at the job site while he/she is off Cal State L.A. payroll.

### **Portability**

The department hiring an individual who has previously held, or currently holds, H-1B status, and who is coming to Cal State L.A. from another employer, can take advantage of the H-1B portability provision. The portability provisions allow such an individual to begin his/her employment with Cal State L.A. as soon as Cal State L.A. has filed a new H-1B petition with the USCIS.

### **EXTENSION CASES**

An application for an extension of H-1B status must be submitted to the International Office as early as 6 months prior to and no later than 3 months before the current H-1B expiration.

The Extension Package includes:

***From the College/Department***

- University Sponsor of a Non-Immigrant Employee
- Employment Visa Sponsor Compliance Requirements
- Copy of recent/updated job description, if appropriate

***From the international employee:***

- Non-immigrant Employee Bio-Data Form
- H-1B Employee Statement signed by non-immigrant employee
- Resume/C.V. of non-immigrant employee
- Application fee for I-129 (if the petition is being processed by the International Office)

**240-Day Rule: Employee Remains on Payroll**

When an extension of H-1B status has been filed with USCIS in a timely manner, and is pending adjudication, departments may extend the individual’s employment authorization on payroll for 240 days beyond the expiration date of the individual’s current H-1B status. The petition is filed in a timely manner when it has been submitted and received by USCIS before the individual’s H-1B status expires.

**AMENDMENT CASES**

Cal State L.A. must file an amended H-1B petition with USCIS if there will be any significant change to a position held by an H-1B employee.

The department must inform the International Office employment based staff of any anticipated change in an H-1B employee’s duties, job title, number of hours worked per week, or work location, or change in salary funding sources leading to a change of department which will handle the employee’s payroll matters. The staff will then review the changes to determine whether Cal State L.A. needs to file an amendment to the H-1B petition.

If it is determined that an H-1B amendment is needed, the department will be instructed by International Office to begin the process. The non-immigrant employee will be responsible for the filing fees associated with an amended petition.

**ALL CASES**

**Processing Times**

This is an estimated timeline of how long the process will take for each step. It will change from case to case.

- |                                |                     |
|--------------------------------|---------------------|
| 1. Initial Package             | - 1 week to 1 month |
| 2. Labor Condition Application | - 2 to 3 weeks      |
| 3. H-1B Application Package    | - 1 week to 1 month |
| 4. USCIS Processing            | - 2 to 4 months*    |

\* The non-immigrant employee may request Premium Processing. This will result in a determination by USCIS in 15 working days. An additional fee is assessed by USCIS and paid by the employee.

**Plan Ahead**

The department should contact International Office well ahead of time if H-1B status may be needed to authorize hiring an individual or retaining an employee on payroll.

**DEPARTMENT RESPONSIBILITIES**

The department is the hiring authority and is responsible for conveying the details of the prospective employee’s appointment clearly and accurately to the International Office. The role of the International

Office in the employment based area is to assist the department with obtaining employment authorization for foreign individuals hired by the department, so they can legally be employed by Cal State L.A.

## **Work Sites**

It is crucial that the International Office be informed of all physical locations where the employee will be working. As part of the H-1B regulations, Cal State L.A. is required to obtain prevailing wage determinations for each location and state in which the employee will work.

## **Posting**

For positions that do not have collective bargaining representation, the Department of Labor requires that a Notice of Intent to File a Labor Condition Application be posted in at least two locations at each place that the individual will be working prior to the filing of the LCA. The department must complete the Notice of Intent, indicating the locations where the notice will be posted, the dates that the notice will be posted, and by whom, and then return said Notice to the International Office as soon as possible. The notice must remain posted for ten working days.

## **Employment Changes**

The department must inform the International Office of any changes in an H-1B holder's employment. This includes, but not limited to: changes in duties, job title, work location, and changes in salary funding sources leading to a change of department which will process the employee's payroll. An employee for whom Cal State L.A. has obtained H-1B status to work full time must work full time at all times. The department should not reduce an employee's work hours without first consulting the International Office. The department must also notify the International Office if an H-1B holder's employment will be terminated, if the individual has resigned from his/her appointment, or if the individual will be taking a sabbatical leave or is requesting a leave of absence.

## **Employment Termination/Separation**

If an H-1B holder's employment is terminated before the end of the period authorized in the H-1B petition, the department is liable to pay the reasonable cost of the individual's return transportation abroad. If an employee moves to another department, the new department will take on the responsibility and liability to pay the return transportation cost if the employee is terminated before the H-1B petition expires. This liability applies only if the employment is terminated by the employer; the department does not have any liability if the individual resigns from his/her appointment.

The department must notify the International Office if an H-1B holder's employment will be terminated or separated, if the individual has resigned from the position, or if the individual will be taking a sabbatical leave or is requesting a leave of absence.

The H-1B holder does NOT have a grace period during which he/she can stay in the U.S. beyond the termination of employment. The H-1B holder must leave the U.S. or apply for USCIS for valid status by the Cal State L.A. separation date in order to stay in the U.S. legally.

## **H-4 Dependents**

Dependents of the H-1B holder are spouse and children under 21 years of age. They will be issued the H-4 visa category for their stay in the U.S.

The Dependents are not permitted to work. They are eligible to study part-time or full-time as long as their educational program does not include employment (ie: research assistantship).

## **TN-NAFTA TREATY**

This visa category is created under the North America Free Trade Agreement and is therefore limited to citizens of Canada or Mexico. There are restrictions as to what type of positions can qualify for this visa category. When a Cal State L.A. Department or other unit wishes to employ a Canadian or Mexican national, this visa category can be an option.

The following eligibility requirements have to be met:

1. The applicant is a citizen of Canada or Mexico.
2. The profession has to be on the list of qualifying positions for TN status, as set forth in Appendix 1603.D.1 to Annex 1603 of the NAFTA.
3. The position requires the individual to have at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.
4. The individual possesses the requisite educational background and experience for that position.

The TN visa can be approved initially for up to three years with extensions for three year increments. There is no cumulative maximum so long as the TN visa holder can show the employment is temporary.

### **Initial Package:**

After a foreign national has been offered a position at the University, the Dean's office should prepare and submit the Startup Package to the International Office.

The Startup Package includes:

#### ***From the College/Department***

- University Sponsor of a Non-Immigrant Employee Approval
- Copy of job description
- Copy of offer letter
- Copy of CSU Salary Schedule of the position category and the year of said Salary Schedule

#### ***From the international employee:***

- Non-Immigrant Employee Bio-Data Form
- Employee Statement signed by non-immigrant employee
- Resume/C.V. of non-immigrant employee
- Copy of diploma and/or license as required for the position

Upon receipt of this package, International Office will issue a TN Support Letter to the non-immigrant employee. He/She will then take the letter along with the package of supporting documents prepared by the International Office to apply for the TN visa.

Mexican citizens will submit the package to the U.S. Embassy/Consulate and apply for the TN visa.

Canadian citizens are not required to obtain a visa stamp for entry into the U.S. They will show the packet of documents prepared by the International Office to the port-of-entry officers and apply for entry at that time.

### **TD-Dependents**

Dependents are spouse and children under 21 years of age. They will be issued a TD visa for their stay in the U.S.

The Dependents are not permitted to work. They are eligible to study part-time or full-time as long as the educational program does not include employment (ie: research assistantship).

### **O-1 EXTRAORDINARY ABILITY**

The O-1 nonimmigrant category is for the employment of individual aliens who have achieved and sustained national or international acclaim for extraordinary abilities in the sciences, arts, education, business or athletics or aliens who have demonstrated a record of extraordinary achievement in the motion picture and television industries. The category permits an employer to petition USCIS for a foreign national to come to the U.S. on a temporary basis to work within his or her area of extraordinary ability or achievement.

Extraordinary abilities mean the foreign national has a level of expertise found in a small percentage of who have arisen to the very top of the field of endeavor.

The initial period is a maximum of three years, with one year extensions available thereafter. There is no maximum cumulative duration. The employer is responsible for providing reasonable costs of return the foreign national to his or her last place of residence if the alien's employment is terminated prior to the sponsored end date.

Cal State L.A. is required to file a Labor Condition Application (LCA) which attests that the alien will be paid the prevailing wage, provide working conditions that will not adversely affect the working conditions of U.S. workers, and there is no strike or lockout at the time of filing. The appropriate bargaining representative for the position must be notified. If there is no bargaining unit for the position, then the LCA must be posted at two conspicuous locations for 10 working days.

The O-1 visa holder may work for the employer sponsor and in the activities described in the petition. A change in job description may require an amended petition to be filed with USCIS.

Non-immigrant employees in this category must be processed by an outside immigration attorney and is responsible for all filing and attorney's fees.

#### **Initial Package:**

After a foreign national has been offered a position at the University, the Dean's office should prepare and submit the Startup Package to the International Office.

The Startup Package includes:

#### ***From the College/Department***

- University Sponsor of a Non-Immigrant Employee Approval
- Department Agreement for Non-Immigrant Sponsor
- Copy of job description

- Copy of offer letter
- Copy of CSU Salary Schedule of the position category and the year of said Salary Schedule

***From the international employee:***

- Non-Immigrant Employee Bio-Data Form
- Employee Statement signed by non-immigrant employee
- Resume/C.V. of non-immigrant employee
- Copy of diploma and/or license required for the position

Upon receipt of this package, the International Office will work with the non-immigrant employee's attorney to process the O-1 petition.

## Processing Times

This is an estimated timeline of how long the process will take for each step. It will change from case to case.

- |                                |                     |
|--------------------------------|---------------------|
| 1. Initial Package             | - 1 week to 1 month |
| 2. Labor Condition Application | - 2 to 3 weeks      |
| 3. O-1 Application Package     | - 1 week to 1 month |
| 4. USCIS Processing            | - 2 to 4 months*    |

\* The non-immigrant employee may request Premium Processing. This will result in a determination by USCIS in 15 working days. An additional fee is assessed by USCIS and paid by the employee.

## PERMANENT RESIDENCY

The non-immigrant employee is now in the U.S. and is a faculty member at Cal State L.A. Under most circumstances, their H-1B status (most typical visa category used for employment) has a maximum validity of six years. The next step to employ them permanently is to sponsor them for legal permanent residence. Permanent resident cases are outsourced to immigration attorneys. The faculty member is responsible for all filing and attorney's fees.

The most common category for faculty is Employment Based (EB)-2. The below process is based on the faculty in EB-2 cases.

In order to initiate the process, the following documents must be submitted to the International Office for approval:

- ✓ Request for Permanent Resident Sponsorship Form (from the College Dean's office)
- ✓ Permanent Resident Support letter (from the College Dean's office)
- ✓ Recruitment Statement (from the Chair of the academic unit or Chair of the Search Committee)
- ✓ Copy of printed (online or hardcopy) advertisement with the name of journal/newspaper and publication date (from the College Dean's office)

Documentation of a print or electronic advertisement for the position, that conforms to one of the following:

- A copy of at least one **print** 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; *or*
- Documentation of an advertisement placed in an **electronic or web-based national professional journal**, provided that the advertisement meets the following conditions:
  - The ad contains the same information listed above for print advertisements
  - The ad must be posted for at least 30 calendar days on the journal's website
  - Documentation of the placement of an advertisement in an electronic or web-based national professional journal must include evidence of the start and end dates of the advertisement placement and the text of the advertisement.

## Labor Certification

The U.S. Department of Labor (DOL) requires the submission of the Labor Certification to take place within 18 months of the job offer. The Labor Certification is to show the Department of Labor that Cal State L.A. went through a competitive recruitment process, the salary paid is a competitive amount, and this international faculty is the best qualified for the position.

The International Office will work with the immigration attorney to complete and submit the Labor Certification.

## U.S. Permanent Residence

Upon the approval of the Labor Certification by DOL, Cal State L.A. has 180 days to submit the I-140 Immigrant Visa Petition to the U.S. Citizenship and Immigration Service showing the faculty member does in fact meet the requirements of the position.

The I-140 petition is prepared by the immigration attorney, and is reviewed and signed by the International Office.

Upon approval of the I-140 petition, the faculty member and his/her family will be eligible, when an immigrant visa number is available, to submit an Application for Adjustment of Status to Lawful Permanent Residence (I-485). Again, this process will be handled by the immigration attorney.

Depending on the faculty's country of citizenship, he/she may file the I-140 and I-485 concurrently. The faculty's attorney will review the faculty's individual situation and advise him/her accordingly.

Upon receipt of the Permanent Residence Card, the faculty member must provide a copy to the International Office and update his/her I-9 Employment Verification Clearance with the Human Resource Office.

## Processing Times

This is an estimated timeline of how long the process will take for each step. It will change from case to case.

- |                                    |                     |
|------------------------------------|---------------------|
| 1. Initial Package                 | - 1 week to 1 month |
| 2. Labor Certification Application | - 8 to 9 months     |
| 3. I-140 Application Package       | - 1 week to 1 month |
| 4. USCIS Processing                | - 3 to 5 months*    |

\* The non-immigrant employee may request Premium Processing. This will result in a determination by USCIS in 15 working days. An additional fee is assessed by USCIS and paid by the employee.

Request package to sponsor an international faculty for permanent residence is send out directly from the International Office to the appropriate department and College after meeting with the international faculty. It is advised for the international faculty to set up a meeting with the International Office during his/her second term at Cal State L.A.