



# Delaware State University Procedure

Title: Immigration Matters Related to University Employment	Administrative Council approval date: 1/16/06
Related Policies and Procedures:	

The following is a summary of current University policies and practices dealing with visa and immigration matters for the Faculty and for the Professional Staff. Questions regarding this policy should be directed to the Vice President of Human Resources, Legal, and Legislative Affairs.

## Definitions

**Foreign National:** Any prospective faculty or staff member who is not a United States Citizen, United States National, Lawful Permanent Resident (“green card” holder), Asylee, Refugee or Temporary Resident under the 1986 amnesty program at the time of their appointment.

**Nonimmigrant Visa/Status:** a temporary immigration status providing permission for a Foreign National to work for the University in a specific position. Includes H-1B status, J-1 status, and O-1 status, among others.

**Immigrant Status, Permanent Residence or “green card”:** the right to live and work in the United States for any employer for no set time limit. Persons may be sponsored to become permanent residents through a close family member, an employer, or in rare cases, by themselves.

**Labor Certification:** an administrative process required for many employment-based permanent residence categories. For faculty, “Labor Certification” must be sought within 18 months of the faculty member’s appointment decision being made. Some faculty may be exempt from the “Labor Certification” process due to their exceptional scholarly record. For non-teaching positions, the labor certification requires extensive evidence of unsuccessful recruitment for qualified U.S. workers.

## I. Procedures

### Visa Information Forms:

No appointment of a foreign national will be approved by any Chair, Dean, the Provost and Vice President for Academic Affairs, or the Vice President for Human Resources or the President without a completed Certificate of Eligibility (DS 2019 Form, available in

the Office of International Affairs) which should be attached to the completed appointment form.

The Office of International Affairs will send the DS 2019 Form and the appointment form to the Human Resources Department for action when the appointment is approved in accordance with the procedure. Under no circumstances will the Office of International Affairs begin processing the DS 2019 until the appointment has been finally approved in accordance with the Procedure.

### **Authorized Signatures:**

Only the Vice President, Human Resources, Legal and Legislative Affairs (or designee with written authorization) is authorized to sign immigrant or nonimmigrant petitions on behalf of the University, in order to ensure the University's compliance with the law. No other faculty member, department chair or supervisor should sign any immigration-related documentation prepared or presented by any employee.

## **II. Eligibility**

### **Professors, Associate Professors, Assistant Professors, Full-time Lecturers and Dependents:**

The University will oversee all necessary immigration documentation to authorize employment with the University. For nonimmigrant petitions such as H-1B that must be prepared through outside counsel, the petition will only be prepared by counsel authorized by the University. The Department of Human Resources will determine the most appropriate type of nonimmigrant visa for the proposed employment. If available, F-1 Optional Practical Training will be used, and J-1 Exchange Visitor status will be used for non-tenure track positions, before H-1B status will be authorized.

Faculty may retain counsel to prepare permanent residence applications on their behalf, which must be outside counsel authorized by the University in the second year of employment (if a second year is/was authorized) after the individuals have been evaluated and reappointed during the annual performance evaluation.

In consultation with counsel, the University will determine whether a Labor Certification or an alternative means is the best method for seeking permanent residence on behalf of a faculty member.

### **Adjunct and Part-Time Faculty:**

The University will not seek or support nonimmigrant status to allow for employment of an adjunct or part-time faculty member. Part-time positions may not serve as the basis of University-sponsored positions under the law.

### **Professional Staff Members and Dependents:**

The University has occasionally sponsored individuals for permanent residence where the staff position is a "professional" one and where the department has substantiated that the position is of a regular nature and verified that there are no qualified U.S. workers available for the position. In recognition that this verification is a difficult claim given the quality candidate pool of available U.S. workers for most staff positions advertised, it therefore shall be the policy that the University will not sponsor persons for temporary employment or permanent residence status on the basis of a staff position, unless the hiring department shows that it has conducted normal recruitment efforts and that the only qualified and available candidate is a Foreign National (see definitions above).

If the Department of Human Resources is satisfied that the hiring of a Foreign National in a staff position is necessary, the University will prepare all necessary nonimmigrant petitions to authorize employment with the University, and will pay the filing fees for non-immigrant visas, including retaining outside counsel as necessary. The Department of Human Resources will determine the most appropriate type of nonimmigrant visa for the proposed employment.

Staff may retain counsel to prepare permanent residence applications on their behalf, which must be outside counsel authorized by the University. The University may (exclusively at their discretion) initiate the permanent residence process (at the employee's cost) in the second year of employment (if a second year is/was authorized) after the individuals have been evaluated and reappointed during the annual performance evaluation.

In consultation with counsel, the University will determine whether a Labor Certification or an alternative means is the best method for seeking permanent residence on behalf of a staff member.

### **Visiting Faculty, Fellows, Research Staff, Research Associates, Postdoctoral Fellows, and Dependents:**

The University will oversee all necessary immigration documentation to authorize employment with the University. For nonimmigrant petitions such as H-1B that must be prepared through outside counsel, the petition will only be prepared by counsel authorized by the University. The Department of Human Resources will determine the most appropriate type of nonimmigrant visa for the proposed employment. If available, F-1 Optional Practical Training and J-1 Exchange Visitor status will be used before H-1B status will be authorized.

The University will not support permanent residence applications for employees in these categories.

### **III. Other Matters**

#### **Spouses and Dependents:**

Generally, spouses and dependents of foreign national employees are eligible for derivative status based on the status given to employee. All expenses and fees, including applications for nonimmigrant visas or permanent residence, will be the responsibility of the dependent and/or the employee.

#### **Insurance Coverage:**

Exchange visitors may not be added to the University's benefit or pension plans as a term of their employment. Instead, all J-1 status visitors are required by the University to enroll in the International Student and Scholar Medical Insurance Plan and the Medical Evacuation and Repatriation Benefit Plan. The cost of insurance coverage must be included in all grant applications submitted for approval (by the President) after the effective date of this Policy. Those grants completed prior to the effective date of this Policy shall require the program to cover the cost of this coverage. If the program is unable to cover the cost of the coverage, such cost will be borne by the visitor.