



Delaware State University

University Area(s) Responsible: Office of Human Resources

Policy Number & Name: 4-34 Employment of Foreign Nationals

Approval Date: February 3, 2020

Overview

Purpose

Delaware State University (hereinafter referred to as either “DSU” or “the University”) is an equal opportunity employer. This Policy is intended to ensure departmental hiring authorities comply with University policy, and more importantly federal laws and regulations concerning the employment of foreign national employees.

Responsibility

The Office of Human Resources, in conjunction with the Provost, is responsible for administering this policy and corresponding guidelines. Questions should be directed to the Office of Human Resources who will maintain communication with outside immigration counsel.

The Dean of the College must notify the Office of Human Resources of any employment immigration related issue.

The foreign national employee is responsible to notify his/her supervisor and the Office of Human Resources when he/she needs to apply for/extend an appropriate work-related nonimmigrant visa (H-1B).

Definitions

Foreign National: Individual who is not a citizen or legal permanent resident of the United States, (i.e. “green card” holder).

Nonimmigrant: Individuals who are admitted to the United States on a temporary basis for a specific purpose, e.g. to study, to tour, to engage in temporary employment. Nonimmigrants may only be employed by DSU if permission to work in the United States has been authorized by the U.S. Citizenship and Immigration Services.

U.S. Citizenship and Immigration Services (“USCIS”): Federal government agency that oversees the temporary and permanent immigration to the United States. USCIS is a component of the U.S. Department of Homeland Security (“DHS”).

Immigrant: Individuals who have been granted lawful permanent resident status, (“green card” holder), but who have not been granted U.S. citizenship. Immigrant status authorizes a foreign national to live and work in the United States indefinitely.

Authorized Signatories

Only the Vice President of Human Resources and General Counsel have authorization to sign any nonimmigrant and immigrant petitions on behalf of the University. Employment confirmation letters may only be generated by the Office of Human Resources. No other faculty member, dean of college, department chair, director of service, or supervisor may sign any immigration-related documentation prepared or presented by an employee. The above listed individuals are free to provide personal letters of support at their own discretion as long as it is clearly stated that the views expressed in such a letter of support are the author’s own and not attributable to the University.

Designated Immigration Counsel

DSU has partnered with the immigration law firm of Green and Spiegel LLC US to provide outside legal counsel and assistance in the preparation and submission of all relevant immigration-related documents which authorize lawful employment with DSU. Because a nonimmigrant or immigrant petition for employer-sponsored immigration benefits is signed by and filed in the name of the University, and in order to be assured of the professional competence and integrity of any attorney representing DSU, the University has the right to require the foreign worker to use a lawyer or law firm of its choice. Privately retained attorneys do not have authority to represent the University

Disclaimers

This Policy may be revised, suspended, or eliminated in response to business needs or changing legal requirements.

Further, this is to confirm that the University’s agreement or willingness to sponsor a foreign national worker for a nonimmigrant or immigrant visa is not a contract of employment and does not supersede any of the University’s agreements, policies or handbooks relating to employment. Moreover, any statements made by the University or its faculty or administrators in support of any immigration-related application or petition shall not supersede or be included in or be part of any employment-related evaluation, including evaluations for tenure, promotion, pay increases or new appointments.

Policy: Nonimmigrant Visa Acquisition

A. Nonimmigrant Visa Summary

A nonimmigrant is a foreign national who comes to the United States on a temporary basis to pursue a professional objective. Once an official offer of employment is extended to a prospective foreign national employee, the Office of Human Resources, in consultation with outside immigration counsel, will determine the most appropriate visa category for the position. The visa most often used to permit a foreign national to be employed by DSU

is the H-1B Nonimmigrant Visa. DSU will always consult with outside immigration counsel to determine the most appropriate visa category, timeline for visa acquisition, likelihood of success, and costs associated with the process.

B. Temporary Worker in a Specialty Occupation (H-1B)

For purposes of academic or professional employment, an H-1B visa holder is an “alien coming temporarily to the United States to perform services in a specialty occupation.” A “specialty occupation” is one that “requires a theoretical and practical application of a body of highly specialized knowledge to perform the occupation and which requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent...”

Under current regulations, an H-1B visa is restricted to six (6) years. An H-1B may be filed for a maximum period of three (3) years at a time. DSU will generally file an H-1B Petition only through the end date of the actual appointment unless a department confirms that it will immediately notify the Office of Human Resources if the employment should terminate prior to the end date requested.

The H-1B visa is valid for only a specific position at a specific employment location with DSU. If an H-1B employee is to take on new or additional job responsibilities or change the location where job responsibilities are carried out or add an additional location, a new petition may need to be filed and acknowledged by the USCIS.

C. Responsibilities for Fees

The Hiring Department will pay the direct fees and legal expenses associated with the standard processing of the H-1B nonimmigrant visa acquisition process. In some instances, the use of the USCIS’s premium processing service can be beneficial. If the use of premium processing is required to start employment at DSU, the University may cover this fee (currently \$1225) as mandated by USCIS regulation and guidance. However, if the use of premium processing service is for the benefit of the foreign national, then this fee may be paid for by the foreign national.

Also, if the University terminates the H-1B employment prior to the end date of the approved H-1B petition, the department chair or supervisor, as arranged, is responsible for “reasonable costs” of return transportation for the employee to his or her last place of foreign residence.

DSU will not cover the expenses associated with the preparation and submission of any applications for derivative family members to maintain status in the United States.

DSU will not cover any expenses associated with the visa stamp application process at a United States Embassy or Consulate General abroad.

D. Procedure for Obtaining a Nonimmigrant Visa

Foreign national employees will not be permitted to work for DSU until authorized to do so by federal law. The determination of whether or not a foreign national is authorized to begin employment or will require immigration sponsorship will be made solely by DSU in consultation with outside immigration counsel.

DSU in cooperation with its designated immigration counsel will prepare and file a Nonimmigrant Visa Petition to obtain the appropriate work authorization. It is the responsibility of the foreign worker to cooperate with this process by providing all requested documents within a reasonable time. DSU will request the foreign national to produce documents to confirm his/her immigration status and eligibility for the requested visa classification. In the event that the foreign national has concealed or misrepresented any aspect of his or her immigration or work history, or is inadmissible or removable under federal immigration law, DSU reserves the right to withhold or withdraw sponsorship in its sole discretion.

The Procedure for obtaining a Nonimmigrant Visa (H-1B) are as follows:

1. The hiring department must obtain the necessary administrative approvals and then notify the Office of Human Resources of its desire to offer a professional position to a prospective foreign national employee.
2. The hiring department must specify in writing to the Office of Human Resources the type of position being offered and salary. The Office of Human Resources will contact the University's outside immigration counsel for consultation.
3. Upon acceptance of said offer by the prospective foreign national employee, the Office of Human Resources will coordinate with the prospective foreign national employee and outside immigration counsel to collect the necessary materials and information to prepare the Petition for Nonimmigrant Worker.
4. Outside immigration counsel will prepare all the necessary documents and submit the Petition for Nonimmigrant Worker on behalf of DSU and the prospective foreign national employee, Please note that this procedure first involves clearance from the U.S. Department of Labor for a Labor Condition Application and then requires approval from the USCIS for the University's Petition to employ the foreign worker.
5. Once the Petition is approved, the foreign national must apply for a visa overseas, or if a Canadian citizen, for admission at a U.S. port of entry or preflight inspection facility. If the foreign national is already in the U.S. the University's petition must so note in order for the petition approval to include either a change of status for the foreign national or an extension of stay/transfer of visa sponsorship to DSU.

Policy: Immigrant Visa Acquisition

A. Legal Permanent Resident (i.e. Green Card) Summary

Legal Permanent Residents are admitted to the United States indefinitely on immigrant visas, frequently known as "green cards." An immigrant visa is issued after the approval of a "preference petition" based on family, self, or employer sponsorship. **DSU does not normally provide permanent resident sponsorship for foreign national staff or faculty.** Such policy applies to all nationalities.

The University may, but is under no obligation to, sponsor a faculty member who has been granted tenure by the University, for legal permanent residence in the United States. The

decision to provide University support for an employer-sponsored permanent residence shall be made on a case-by-case basis for faculty granted tenure by the University.

DSU will not sponsor foreign national employees in the following position classifications:

- Tenure-track academic positions;
- Non-tenure track academic positions, such as lecturer, research professor, and other clinical educator;
- Post-doctoral fellow or researcher positions;
- Research assistants and associations; and
- Non-academic staff positions.

Please note that foreign national staff or faculty who is not eligible for sponsorship by the University remains eligible to explore with an immigration attorney the possibility of self-sponsorship for permanent residence under the “national interest waiver” or “EB-1 Foreign National of Extraordinary Ability” provisions available under U.S. immigration law. More information on these options is available at the USCIS website (www.uscis.gov).

B. Recommendations to sponsor Tenure Faculty for Legal Permanent Residence

The University has very clearly-delineated policies regarding the types of positions it will sponsor for permanent residence: the University may, but is under no obligation to, sponsor a foreign national faculty member who has been granted tenure by DSU for legal permanent residence. Decisions to provide such support will be made on a case-by-case basis, and is in the sole discretion of DSU. A request to sponsor a foreign national worker for legal permanent residence shall be made in writing by the foreign worker’s department chair or supervisor directly to the Office of Human Resources. Such requests shall be treated as a recommendation only and are not binding on the University. In making such requests, department chairs and supervisors shall consider i) the Department has granted tenure to the academic faculty member; ii) the program or activity the worker is involved in, length of service and the estimated period of continued service; iii) how the worker is needed as an integral part or as an essential component of the department or activity; iv) what current and future benefit the worker brings to the University; and v) present and future funding source for the workers position; and vi) efforts, if any, that have been made to recruit other qualified workers.

The decision to sponsor a foreign worker for legal permanent residence will be made by the Office of Human Resources, in consultation with outside immigration counsel. The Office of Human Resources, in consultation with the Provost, and also the University’s outside immigration counsel to determine viability and likelihood of success for the submission of an EB-1 Immigrant Petition seeking classification as an Outstanding Professor or Researcher. Some Applications for legal permanent residence require the filing of an Application for Permanent Labor Certification to the U.S. Department of Labor (“PERM Labor Certification”). The University will not support any PERM Labor Certification requests for foreign workers.

If DSU elects to sponsor a foreign national employee for legal permanent residence, the matter will be referred to designated outside immigration counsel. Employer-sponsored permanent residence is a Petition filed in the name of DSU, and therefore to ensure professional competence and integrity, DSU will require the foreign national to use its designated immigration counsel designated by the University. Privately-retained attorneys do not have authority to represent the University.

The Office of Human Resources in coordination with the foreign national employee and designated immigration counsel will cooperate in providing all information and documents which are required to support an employer-sponsored petition for permanent residence.

If the foreign national employee is in the United States and there is no visa backlog, he or she may submit an application for adjustment of status to permanent residence (I-485) concurrently with DSU's immigrant visa petition. DSU will consult with its outside immigration counsel regarding the overall process, including the most relevant preference category to be selected, and associated timeline with the process.

C. Responsibilities for Fees

The employee is responsible for paying the direct USCIS filing fees and legal expenses associated with the standard processing of all immigrant visa processes. It is the responsibility of the foreign national to make timely payment of all fees associated with a University-sponsored immigrant petition for legal permanent residence.

DSU will not sponsor or cover the expenses associated with the preparation and submission of any applications for derivative family members to obtain lawful permanent resident status. However, the foreign national is permitted to engage the services of our immigration counsel, who offers a reduced fee for same to all DSU employees.

D. Procedure for Requesting Immigrant Petition Sponsorship

As detailed above, DSU does not normally provide foreign nationals with sponsorship for permanent residence. Such policy applies to all nationalities. If a faculty member is granted tenure by DSU, the University may, but is under no obligation to, sponsor a foreign national faculty member for legal permanent residence. Decisions to provide such support will be made on a case-by-case basis and is under the sole discretion of DSU.

The Procedure for requesting a Immigrant Visa (EB-1) sponsorship by the University are as follows:

1. After tenure has been granted, the Dean of the College may make a formal request in writing to the Office of Human Resources and the Provost to sponsor the foreign national employee for legal permanent residence. Such request will be treated as a recommendation only. The Dean of the College should include a copy of the faculty member's tenure application. It is also recommended that they provide a completed questionnaire (to be completed by the prospective foreign national employee) and any other relevant documentation deemed necessary for consideration of said request. (*See Appendix C* for sample

template for the Dean of the College to request sponsorship in writing; See also **Appendix D** for questionnaire and document request checklist).

2. Office of Human Resources and the Provost, in consultation with outside immigration counsel, will review the relevant materials for consideration of sponsorship.
3. Office of Human Resources will communicate with the University's outside immigration counsel to determine viability and success for an Immigrant Petition seeking EB-1 Outstanding Professor classification. Outside immigration counsel will provide an assessment of the prospective immigrant petition.
4. If the University agrees to sponsor the foreign national employee for legal permanent residence, the Office of Human Resources will coordinate with the prospective foreign national employee and outside immigration counsel to collect the necessary materials and information to prepare the Petition for Immigrant Worker.
5. Outside immigration counsel will prepare all the necessary documents and submit the Petition for Immigrant Worker on behalf of DSU and the prospective foreign national employee.

APPENDIX A

Example of University Payroll Titles

Tenured Faculty

Tenure-track faculty

Post-Doctoral Associate and Post-Doctoral Fellow

Research Associate and Research Assistant Professor/Research Associate Professor

Research Assistant (Full-time, non-student position)

Staff/Administrator positions

Sponsorship

- University H-1B Sponsorship
- University sponsorship for permanent residence, if qualified, for EB-1 Immigrant Petition seeking classification as an Outstanding Professor/Researcher will be considered on a case-by-case basis.

- H1B sponsorship.
- No permanent residence sponsorship.

- H-1B sponsorship under University J-1 or H-1B.
- No permanent residence sponsorship.

- H-1B sponsorship under University J-1 or H-1B.
- No permanent residence sponsorship.

- University J-1 sponsorship or may be employed under F-1 Practical Training.
- The University may consider requests to support H-1B sponsorship if the position qualifies under U.S. immigration laws.
- No permanent residence sponsorship.

- The University may consider H-1B sponsorship on a case-by-case basis if the position qualifies under U.S. immigration laws.
- No permanent residence sponsorship.

APPENDIX B

H-1B Visa Flow Chart

For optimal success and efficacy, the Employer, prospective Foreign National, and the Firm must work together and respond to communication in a timely manner.

	Immigration Counsel	DSU & Foreign National Employee
STEP 1: Questionnaire	<ul style="list-style-type: none"> Designated outside immigration counsel evaluates feasibility of case based on preliminary info provided by DSU. 	<ul style="list-style-type: none"> DSU notifies designated outside immigration counsel about potential H-1B case. DSU coordinates completion of employer and employee questionnaires.
STEP 2: Labor Condition Application (LCA)	<ul style="list-style-type: none"> Counsel conducts prevailing wage analysis, provides posting notice and compliance materials to DSU. 	<ul style="list-style-type: none"> DSU posts provided notice. LCA is submitted electronically on DSU's behalf. LCA takes 5-7 business days to be certified.
STEP 3: Sign, Review, and Return	<ul style="list-style-type: none"> Counsel drafts supporting materials, including Form I-129 (Petition for Nonimmigrant Worker), DSU's support letter, and legal presentation. Materials are sent to DSU for signature once LCA is certified. 	<ul style="list-style-type: none"> DSU reviews the material for accuracy, signs the appropriate forms/letter, and returns documents to counsel.
STEP 4: Filing and Processing	<ul style="list-style-type: none"> Counsel assembles H-1B filing for submission to the U.S. Citizenship and Immigration Services ("USCIS"). 	<ul style="list-style-type: none"> Petition is submitted to USCIS for processing. Processing timeline: 6+ months under regular processing or 15 days if using premium processing.

APPENDIX C

Template for Dean of the College for recommendation request of University sponsorship of a foreign national for permanent residence.

This is to confirm the Departments recommendation that the University Sponsor Dr. John Doe for permanent residence. Please answer the below questions:

1. Please provide copy of tenure application and approval.
2. Please provide examples of the research and/or work involved by the faculty member.
3. Please indicate the faculty member's length of service with the University and period of continued service.
4. Please provide examples of how the faculty member is an integral part of essential component of the department.
5. Please provide examples on how you feel the faculty member is currently and, in the future, will benefit the University.
6. Please indicate the department's past and current recruiting efforts to find other qualified workers and how you feel this particular faculty member is more qualified.

Date	
Name of the foreign national employee	
Current Job Title	
Current Salary	
Original Date of Hire	
Date Tenure Granted	

APPENDIX D

Employee Questionnaire and Checklist for Consideration of Employment-Based Sponsorship of an Immigrant Petition seeking classification as an EB-1 Outstanding Professor.

Personal Data for Foreign National Employee		
No.	Question	Your Response
1	Full Name	
2	Maiden name (if applicable)	
3	Gender	
5	Current Address	
6	Phone number	
7	Cell number	
8	Email address	
9	Social security number (if any)	
10	Alien Registration number (this is an immigration file number – most foreign nationals coming from abroad do not have one)	
11	Date of birth	
12	City and country of birth	
13	Current citizenship	
14	Address outside of the U.S.	
15	Marital status	
16	Passport number	
17	Passport expiration date	
18	Have you ever been arrested and/or convicted of a crime – if yes, please detail what occurred	
19	Have you ever worked without authorization in the US?	
20	Have you ever received a public benefit in the US or in a foreign country?	

Questions Pertaining to Educational Background				
Name of Institution of Higher Education	Address	Field of Study	Dates attended	Degree earned

Questions Pertaining to Previous Employment

Name of Employer	Position with description (<i>please use a separate sheet of paper if needed</i>)	Dates of employment	Number of degreed professionals supervised

Information and Evidence pertaining to national/international renown in your field of endeavor <i>Please provide any relevant documentation for consideration.</i>		
No.	Question	Your Response
1	Copy of passport biographical page	
3	Copy of C.V.	
4	Do you have a written contact with your prospective employer for services to be performed in the US? Have you been granted tenure? Please attach proof.	
5	Have you received any nationally or internationally recognized prizes or awards for excellence in the field of endeavor? If yes, please explain and attach proof of same.	
6	Are you a member of any association(s) in which outstanding achievement in your field is a requirement for entry? If yes, please explain and attach proof of same.	
7	Has your work in the field of endeavor been featured in professional or major trade publications, newspapers, or other major media? If yes, please explain and attach proof of same.	
8	Have you made any original scientific, scholarly, or business-related contributions of major significance in the field of endeavor? If yes, please explain and attach proof of same.	

9	Have you authored or co-authored scholarly articles in professional journals or other major media in the field of endeavor? If yes, please explain and attach proof of same.	
10	Do you command a high salary or other remuneration (as compared to similarly situated workers in your field)? If yes, please explain and attach proof of same (i.e. contracts, etc.)	
11	Have you, individually or as part of a panel, served as a judge of the work of others in your field (this includes peer reviewing articles on behalf of journals)? If yes, please explain and attach proof of same.	
12	Have you been or will you be employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation? If yes, please explain and attach proof of same.	
13	Name and contact information of any “experts” in your field who would be willing to write a testimonial letter on your behalf.	

APPENDIX E

Employment Verification Letter Sample

[DATE]

U.S. Citizenship and Immigration Services

RE: Employment Verification for Dr. John Doe

To Whom It May Concern:

This is to confirm that Dr. John Doe is employed in the tenure-track position of Assistant Professor at Delaware State University from January 2018 to the present.

In the position of Assistant Professor, Dr. Doe will provide the following job duties:

- Teaches courses in marketing and business.
- Conducts in appropriate and relevant researcher.
-

Dr. Doe receives an annual salary of \$50,000.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Name

Job Title

Office of Human Resources