

HIRING FOREIGN NATIONALS IN ACADEMIC AND RESEARCH POSITIONS

A. Policy Statement

In accordance with provisions of the Immigration Reform and Control Act (IRCA), the University has delegated to International Student and Scholar Services (ISSS) sole authority to administer the J-1 Exchange Visitor Program and file H-1B temporary employment and permanent residence petitions in support of the teaching and research mission of the University.

B. Scope

This policy addresses the hiring of foreign nationals in academic and research positions, not the employment of enrolled students.

C. Purpose

This policy provides departments with general guidelines for inviting Exchange Visitors and processing petitions for the most common non-immigrant classifications and for permanent residence for foreign nationals employed at the University.

SECTION I. Compliance with the Immigration Reform and Control Act

In order to comply with the provisions of the IRCA, the University may not employ individuals who are not authorized to work in the United States. Department of Labor regulations prevent employers from allowing foreign nationals to volunteer in positions that are usually compensated. Foreign nationals who are awaiting the necessary employment authorization or whose work authorization has expired are not allowed to serve as volunteers. *Note: Foreign nationals who are financially supported by a source other than the university are not considered volunteers.*

SECTION II. WORK AUTHORIZATIONS

A. Obtaining Work Authorization for Foreign Nationals

It is necessary to obtain work authorization for foreign nationals to work at the university and department head approval is required for all invitations to foreign nationals who will be employed at the University. Department representatives are required to submit to ISSS all requests to obtain work authorization for a foreign national employee and should immediately contact ISSS once a decision has been made to hire a foreign national. Contacting ISSS during the recruitment phase helps assure that the foreign national can begin employment in a timely manner. Policy precludes an attorney from filing petitions on behalf of the university for an employee; therefore no university representative should sign a G-28 (*Notice of Appearance*) allowing an attorney to represent The University of Texas at Austin.

B. Routes to work authorization

There are several non-immigrant classifications that allow for employment (see attached chart: “Non-Immigrant Visa Categories Most Commonly Used at UT Austin”). The primary classifications for teaching and research positions are outlined below.

1. J-1 Classification (Exchange Visitor Program)

The J-1 Exchange Visitor Program is designed to facilitate temporary exchanges and collaboration rather than long-term employment. It cannot be used for tenure-track positions. The J classification may be used to invite foreign nationals who will teach or conduct research but will not have an appointment of indefinite duration (e.g., visiting titles). Foreign nationals who are self-funded must use the university’s J-1 Exchange Visitor Program. The university is authorized to issue J-1 visa eligibility documents directly to the foreign national. Department of State regulations require that all J-1 Exchange Visitors and their accompanying family members have health insurance for the duration of their stay in the United States. Exchange Visitors who do not receive health insurance as a benefit of employment at the University and have not purchased insurance prior to their arrival in the United States must purchase the required health insurance through ISSS.

2. H-1B Classification (Temporary Worker)

For long-term employment in teaching and research positions, H-1B is the most common classification. It is available for up to six years and allows transition to permanent residence “green card” for qualified foreign nationals and is therefore most commonly used to hire tenure-track faculty. The H-1B process involves governmental agencies, processing times and substantial filing fees.

The H-1B petition fees, including the Form I-129 filing fee and the Fraud Prevention and Detection Fee, must be paid by the employing department. If expedited processing of the petition is desired, the additional “premium processing” fee of \$1,000 should be paid by the employing department unless the foreign national has chosen to expedite the petition for personal benefit. Application fees for dependent family members must be paid by the foreign national.

Part-time employment is appropriate only in unusual situations. Departments that wish to hire a foreign national part-time must agree to closely monitor hours worked and maintain specific documentation as required by Department of Labor.

3. Visa Applications

In order to enter the United States, foreign nationals (except Canadian citizens) who are abroad will need to apply for a visa at a U.S. embassy or consulate. Appointment arrangements and visa application processing times vary among U.S. embassies and consulates. In addition, security clearances (particularly for those coming to work in “sensitive fields” listed on the Technology Alert List) may cause long and unpredictable delays in securing the proper visa to enter the U.S. Since the visa application may present both challenges and delays, this should be taken into account when an offer of employment is made.

4. Permanent Residence (Green Card)

Permanent Residence is a classification that allows a foreign national to remain indefinitely in the United States with legal, unrestricted work authorization. Only full-time employment of indefinite duration meets the legal criteria for lawful permanent residence. Part-time employment and employment with a fixed duration does not qualify for permanent residence. In most cases, the university will pursue permanent residence for a foreign national through the classification of an "outstanding professor/researcher" or, in the case of tenure-track teaching faculty positions, through "special handling" of the labor certification application. In order to take advantage of the streamlined special handling process, the application must be submitted within 18 months of the offer of employment. Sponsoring departments must initiate this process with the ISSS early enough to allow for the preparation of the application.

5. Job Titles Eligible for H-1B and Permanent Residence

In order to support the teaching and research mission of the university and in light of the eligibility criteria provided by federal regulations a limited number of job titles are eligible for university sponsorship.

	Job Title	Eligible for H1B	Eligible for Permanent Residency
Academic Titles:	Professor	X	X
	Associate Professor	X	X
	Assistant Professor	X	X
	Clinical Professor	X	X
	Associate Clinical Professor	X	X
	Assistant Clinical Professor	X	X
	Instructor	X	
	Senior Lecturer	X	
	Lecturer	X	
Research Titles:	Research Scientist	X	X
	Senior Research Scientist	X	X
	Research Engineer	X	X
	Senior Research Engineer	X	X
	Research Associate	X	X
	Postdoctoral Fellow	X	
	Senior Research Fellow	X	
	Research Fellow	X	
Project Director	Project Director	X	X
Librarian Titles:	Professional Librarian	X	1
Classified Titles:	Research Engineering/ Scientist Associate III-V	X	X
	Social Science/Humanities Research Associate III-V	X	X

1 – Because of the complexity of immigration and labor laws, consideration in submitting immigrant petitions for positions that do not qualify under the category of Outstanding Researcher/Professor or Special Handling Labor Certification will be determined on a case-by-case basis.

Requests for exceptions to this policy are made in writing by the department head to the Office of the Executive Vice President and Provost. The request must first be routed through ISSS for review. The factors that would justify such an exception need to be fully explained.

For Assistance: Questions regarding work authorizations and permanent residency petitions should be directed to the International Student and Scholar Services.

Source: Immigration Reform and Control Act of 1986 (Act of Nov. 5, 1986, Pub. L. No. 99-603, 1986 U.S.C.A.N (99 Stat.)); Title 22 of the Code of Federal Regulations; Title 20 of Code of Federal Regulations section 655.732; New UT Austin Policy