# Standard Administrative Policy and Procedure

# Subject: International Employees, Scholars, and Students—Visas and Statuses

# Number:

## PURPOSE

In accordance with its mission to attract and retain diverse and skilled employees, the University of Wyoming (University) offers visa sponsorship to foreign nationals for certain employees and students. To ensure compliance with federal immigration laws and University hiring practices, the University has established the following guidelines for University-sponsored immigrant and non-immigrant visa petitions.

## DEFINITIONS

**Beneficiary:** The Beneficiary of a visa petition is the individual who will be granted the visa status. For UW employment-sponsored petitions, the Beneficiary is the eligible UW employee. For student-based petitions, the Beneficiary is the prospective student or visiting academic.

**Business Activities:** Either employment or other prearranged Business Activities in a North American Free Trade Agreement (NAFTA)-eligible profession, for a U.S. entity. A Trade NAFTA (TN) status holder may not be self-employed.

**Curricular Practical Training (CPT):** Benefit of the F-1 visa status for students who have been lawfully enrolled on a full time basis in an approved college, university, conservatory, or seminary for one full academic year, excluding students currently enrolled in an English language training program. Alternate work/study, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school. CPT is authorized, within current federal regulatory and institutional policies, by a Designated School Official (DSO) in the International Students and Scholars office and does not require adjudication by USCIS.

**Labor Conditions Application (LCA):** Is a requireddocument that a prospective H-1B employer files with the Department of Labor when it seeks to employ nonimmigrant workers at a specific job occupation in an area of intended employment for not more than three years. The LCA process includes 1) obtaining a prevailing wage determination, 2) filing a LCA with the Department of Labor, and 3) inspection and certification of the LCA.

**Optional Practical Training (OPT):** Benefit of the F-1 visa status for students who have been lawfully enrolled on a full-time basis in an approved college, university, conservatory, or seminary for on full academic year and are current enrolled in or completing an academic program, excluding students who are enrolled in or completing an English language training program.  A temporary employment for practical training directly related to the student’s major area of study. Can be approved for employment during study (Pre-Completion OPT) or after program completion (Post-Completion or STEM OPT) and is adjudicated by USCIS, but does require recommendation by the Designated School Official (DSO) in the International Students and Scholars office prior to application.

**Permanent Labor Certification (PERM):** A Permanent Labor Certification issued by the Department of Labor allows an employer to hire a foreign worker to work permanently in the U.S. The Department of Labor must certify to the USCIS that there are not sufficient U.S. workers able, willing, qualified and available to accept the job opportunity in the area of intended employment and that employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

**Professional Level:** Undertakings which require that the individual has at least a baccalaureate degree or appropriate credentials in a profession set forth in [Appendix 1603.D.1 of the NAFTA](http://www.sice.oas.org/trade/nafta/chap-161.asp#A1603).

**Specialty Occupation:** The position requires attainment of a bachelor’s or higher degree in the specific specialty as a minimum for entry into the occupation in the U.S. Education, training, or progressively responsible experience in the specialty that is equivalent to the completion of such a degree may substitute for attainment of a bachelor’s or higher degree in the specific specialty provided it conforms with the education equivalency regulations found in the Code of Federal Regulations ([8 C.F.R. § 214.2(h)(4)(iii)(D)](http://www.nafsa.org/_/file/_/amresource/8cfr2142h.htm#2142h4iiiD)).

**Temporary Workers:** Temporary Worker visas are for persons who want to enter the U.S. for employment lasting a fixed period of time and are not considered permanent or indefinite. Each of these visas requires the prospective employer to first file a petition with U.S. Citizenship and Immigration Services (USCIS).

**U.S. Citizenship and Immigration Services**: U.S. Citizenship and Immigration Service (USCIS) is the federal agency that oversees lawful immigration to the United States. USCIS is a component of the Department of Homeland Security.

## STUDENT VISAS AND STATUSES

1. Most international students admitted to eligible degree programs within the University will be issued an I-20 Certificate of Eligibility to apply for F-1 student status. In some cases, students may be eligible for a form DS-2019 to apply for J-1 student status. International Students and Scholars staff serve as Designated School Officials (DSOs) and Alternate Responsible Officers (AROs) with the F and J visa programs but support international students in a variety of visa statuses that may or may not have any affiliation to the University.
2. **J-1**

In carrying out the responsibilities of the Exchange Visitor Program, the Department of State designates public and private entities to act as exchange sponsors. J-1 nonimmigrants are therefore sponsored by an exchange program that is designated as such by the U.S. Department of State. These programs are designed to promote the interchange of persons, knowledge, and skills, in the fields of education, arts, and science.

* 1. **J-1 Scholar**

The Short-term Scholar and Research Scholars categories of the J-1 classification (exchange visitors) is authorized for those who intend to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training.

* 1. **J-1 Student**

J-1 student status is a non-immigrant classification which allows a student to remain in the U.S. as long as they are a properly registered full-time student and maintain their J-1 student status.

Certain international students admitted to eligible degree programs within the University of Wyoming will be issued DS-2019 Certificates of Eligibility for J-1 student status if the student is financially sponsored by a government or international organization that requires the student to be in J-1 status.

* 1. **J-1 Physicians**

For physicians in clinical training programs (residency and fellowship), the Educational Commission for Foreign Medical Graduates (ECFMG) is the only sponsor of a J-1 visa. The Department Administrative Policy and Procedure can be found **here.**

1. **F-1**

The F-1 Visa (academic student) is intended for full-time students at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program. The student must be enrolled in a program or course of study that culminates in a degree, diploma, or certificate and their school must be authorized by the U.S. government to accept international students.

1. **F-1 Optional Practical Training**

A student is allowed a maximum of 12 months of full-time OPT for each increasing degree level. A student does not need a job offer to apply for OPT and having a job opportunity does not expedite the process. Some students may be eligible for an additional 24 months of OPT. For additional information, please visit the [USCIS OPT page](https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-opt-for-f-1-students).

* 1. Reporting OPT Employment
     1. While on OPT, students are required to report OPT employment and certain personal information changes within 10 business days to maintain their F-1 status. Failure to report this information in timely manner will be considered violation of their F-1 status and may jeopardize their legal status in the U.S.
     2. If any of the following occur, a student must report them within 10 business days:
        1. New employment
        2. Change in employer’s address
        3. Start and/or end date of employment
        4. Any periods of unemployment
        5. Change of U.S. address
        6. Change of personal phone number and/or e-mail address
        7. Change of immigration status
        8. Date of departure from the U.S.
     3. Students from the University of Wyoming, specifically, should report their OPT to the University’s ISS office.
     4. Students from other institutions who are employed by the University of Wyoming while on OPT must report to the DSO at their academic institution who recommended the student for OPT.
  2. Employees for the University who are on OPT should check in with HR.
  3. For additional information about CPT or OPT please contact ISS.

## TEMPORARY WORKER VISAS AND STATUSES

1. The University may sponsor Temporary Workers for employment activities if the employee qualifies for an employment-based visa or status. Classifications available for sponsorship include:
   1. **H-1B Specialty Occupations**

The H-1B Temporary Worker (nonimmigrant) classification is designated by USCIS for non-U.S. workers in Specialty Occupations.

If a position qualifies as a specialty occupation and a foreign national is selected for that position, the supervisor may contact Human Resources to begin the process for the employee to petition for an H-1B visa.

* 1. **Trade NAFTA (TN) Professionals**

This classification is available as a provision of the NAFTA. Only Canadian and Mexican citizens are eligible for TN status. The TN classification allows Canadian and Mexican citizens to be admitted to the U.S. temporarily to engage in Business Activities at a Professional Level. TN sponsorship is only extended at the discretion of the Office of General Counsel.

The responsible party for all costs must be determined and approved by the dean and hiring department before the Office of General Counsel will move forward with a petition.

* 1. **O-1 Extraordinary Ability or Achievement**

The O-1 status is intended for foreign nationals who have extraordinary ability in the sciences, education, or business and who are coming temporarily to the U.S. to engage in employment. An O-1 is one of a handful of individuals who have risen to the top of their profession or field of endeavor.

The Office of General Counsel coordinates the O-1 sponsorship process with the applicant and hiring department. The Office of General Counsel is the only office with the authority to facilitate the filing of an O-1 petition or sign Form I-129 in support of an O-1 request. As the University will be the petitioner in such cases, it is not at the discretion of the foreign national or the sponsoring Department to select an attorney to represent either the department or the University.

The University limits O-1 sponsorship to tenure and tenure-track faculty positions. Permission to proceed with an O-1 requires the express written consent of the appropriate dean or vice president. The Office of General Counsel will provide eligible faculty and staff with detailed instructions for securing this permission as it varies by college, school, or division.

O-1 sponsorship incurs both legal and filing fees. These fees are not a mandated employer business expense and may be borne by either the foreign national or the sponsoring department. The responsible party for all costs must be determined and approved by the dean and hiring department before the Office of General Counsel will move forward with a petition.

* 1. **E-3 Specialty Occupation Works from Australia**

The E-3 classification applies only to nationals of Australia. An employee must be coming to the U.S. solely to perform services in a Specialty Occupation. The Specialty Occupation requires theoretical and practical application of a body of knowledge in professional fields and at least the attainment of a bachelor’s degree, or its equivalent, as a minimum for entry into the occupation in the U.S. E-3 sponsorship is only extended in exceptional circumstances at the discretion of the Office of General Counsel.

## PERMANENT RESIDENCY

1. The Office of General Counsel is the only office with the authority to facilitate the preparation of employment-based permanent residency petitions that require a job offer. The University has the discretion to accept or decline any request for permanent residency sponsorship.
2. The University may pursue one of the following employment-based permanent residency petitions:
3. EB-1(B) Outstanding Professors and Researchers
4. EB-2 Advanced Degree
5. EB-3 Skilled Workers and Professionals
6. **Eligibility**
7. Sponsorship criteria:
   1. Non-academic personnel must hold an administrator or administrative professional position as defined by Human Resources. Other staff positions may be eligible only in extraordinary circumstances.
   2. Tenure and tenure-track faculty members at the rank of assistant professor (or above).
   3. Research professors and research scientists per UW Regulation 2-1.
   4. Instructors in Fixed Term Rolling Contracts. Other non-tenure track faculty in permanent, full-time positions, may be eligible only in extraordinary circumstances.
8. Colleges, schools, and divisions have the discretion to decline sponsorship or delay sponsorship until an employee has been employed with the University for at least two years.
9. Eligible faculty or staff should contact the Office of General Counsel for more information. In some circumstances, the Office of General Counsel will recommend a meeting with the foreign national and an administrator from their sponsoring department or division. This is particularly useful in cases where PERM will be necessary.
10. **University Permission**

Permission to proceed with an employer-sponsored case requires the express written consent of the appropriate dean or vice president. The Office of General Counsel will provide eligible faculty and staff with detailed instructions for securing this permission as it varies by college, school, or division.

1. **Costs**

Sponsorship for permanent residency incurs costs (legal, filing and administrative), and the responsible party for all fees must be determined prior to initiation of the case. The Office of General Counsel will provide the foreign national employee and sponsoring department or division with an estimate of related costs.

1. **Employer Sponsored Categories that Require University Permission**
2. EB-1(B): Outstanding professors and researchers
3. EB-2: Advanced degree
4. EB-3: Skilled workers and Professionals
5. **Categories that Allow for Self-Sponsorship**

It is important to note that there are pathways to permanent residency that do not require employer sponsorship for which the University would not be the petitioner on Form I-140. With regard to these cases, the foreign national employee may choose to submit a self-sponsored petition on their own or with the assistance of a personal attorney. (If a foreign national employee is pursuing a self-sponsored case and is continuining employment with the University, the Employee must inform Human Resources .)

1. EB-1(A): Extraordinary Ability
2. EB-2 NIW: National Interest Waiver

## SIGNATORY AUTHORITY

Authority to sign immigration and visa documentations on behalf of the University is delegated to the following offices and officials per form:

1. **Department of Homeland Security**

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| --- | --- | --- |
| I-17 | Initial School Certification Petition | Primary Designated School Official (PDSO), Designated School Officials (DSO) within ISSand the University President |
| I-20 | Certificate of Eligibility for Nonimmigrant Student Status | Primary Designated School Official (PDSO), Designated School Officials (DSO) within ISS |

1. **Department of State (Administered through BridgeUSA)**

|  |  |  |
| --- | --- | --- |
| DS-2019 | Certificate of Eligibility for Exchange Visitor (J-1) Status | Primary Designated School Official (PDSO), Designated School Officials (DSO) within ISS |
| DS-3036 | Exchange Visitor Program Application | Primary Designated School Official (PDSO), Designated School Officials (DSO) within ISSand the University President |

1. **Department of Labor**

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| --- | --- | --- |
| ETA-9035 | Labor Condition Application  (LCA) | Designee within Human Resources |
| ETA- 9089 | Permanent Labor Certification  (PERM) | Designee within Human Resources |

1. **USCIS**

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| --- | --- | --- |
| G- 28 | Notice of Entry of Appearance as Attorney or Accredited Representative | General Counsel or designee |
| I-129 | Petition for a Nonimmigrant Worker | Designee within Human Resources |
| I-140 | Immigrant Petition for Alien Workers | General Counsel or designee |
| Proof of Employer’s Ability to Pay Letter | VP for Budget and Finance |
| I-485 | Application to Register Permanent Residence or Adjust Status | General Counsel or designee |
| I-907 | Request for Premium Processing | Designee within Human Resources or General Counsel |

1. **U.S. Immigration and Customs Enforcement (ICE)**

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| --- | --- | --- |
| I-983 | Training Plan for STEM OPT Students | OPT employee’s supervisor |

1. Any forms which are not mentioned above but require a signature on behalf of the University may only be signed with the permission and discretion of the Office of General Counsel.

## DEPENDENT AND DERIVATIVE PETITIONS

1. For immigration purposes, dependents are the spouse or children of the Beneficiary, the applicant who is in the U.S., and who obtained their visa status in the U.S. through their relationship with the Beneficiary.
2. If an applicant for a University-sponsored visa status has dependents in the U.S., in any dependent immigration status, an application must be timely filed to change or extend the status of the dependents if the Beneficiary’s status changes.
3. **Please note any applications for dependents (including but not limited to I-539 and I-485) are personal applications that the University is not responsible for. The University cannot advise on these forms or processes and will not forward form I-765 along with the I-539.**
4. **It is not the responsibility of the University to monitor or advise on passport status, visa status, or other traveling and identification documentation for dependents.**
5. **If submitting a dependent application along with the H-1B and Permanent Residency Beneficiary's petition, each dependent must submit this signed** [**affidavit**](https://docs.google.com/document/d/1ZktaWkvGLLgQzsB0VJR8pHJ7Gln_PAFd/edit?usp=sharing&ouid=112802970048264284613&rtpof=true&sd=true) **to Human Resources with their application.**

## EXPORT CONTROL INFORMATION

1. **Export Control Certification**

In December 2010, USCIS introduced a data collection requirement in Part 6 of its Form I-129, Petition for a nonimmigrant worker, for certain categories of H, L, and O visas. Petitioners are required to make a certification regarding the release of controlled technology or technical data subject to the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR) to foreign persons in the U.S.

1. USCIS requires sponsoring employers to attest under penalty of perjury that technology or technical data that will be released to a UW foreign-national employee during the period of their employment will or will not require a license from the U.S. Department of Commerce or the U.S. Department of State. The hiring department is required to complete the I-129 Export Certification in partnership with the Export Control Officer for the University of Wyoming.
2. The export control certification process is completed by the hiring department. The H-1B applicant/foreign worker is not required to complete any part of this process.

**Responsible Division/Unit:** International Students and Scholars & Human Resources

**Source:** This policy was based on and adapted from Johns Hopkins University and Stanford University policies.

**Links:**

**Associated Regulations, Policies, and Forms:**

**Approved:** 7-17-18