



Standard Administrative Policy and Procedure

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

Number: UW SAP 5-5.5

I. PURPOSE

In accordance with its mission to attract and retain diverse and skilled employees, the University of Wyoming (University) offers visa sponsorship to certain foreign nationals who are seeking to work or study at the University. To ensure compliance with federal immigration laws and University hiring practices, the University has established the following guidelines for University-sponsored Immigrant and Nonimmigrant visa petitions.

II. DEFINITIONS

Academic Training: Benefit of the J-1 visa status for students to participate in an academic training program, with or without wages or other remuneration, during or after their studies. Academic Training must be related to the student's major area of study and other requirements based on the specific type of study (degree-seeking or non-degree) and length of study. Academic Training does not require adjudication by the U.S. Citizenship and Immigration Services (USCIS) or the U.S. Department of State, but is approved by the Responsible Officer (RO) or Alternate Responsible Officer (ARO) in the International Students and Scholars office prior to participation.

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

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. CPT must occur before the student's program end date, must directly relate to the student's major area of study, and be an integral part of the school's established curriculum. A student who has completed one year or more of full-time CPT is ineligible for post-completion OPT at the same educational level.

Immigrant: Status of individuals who live permanently in the U.S. as a permanent resident.

Labor Conditions Application (LCA): Required document 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 an LCA with the Department of Labor, and 3) inspection and certification of the LCA.

Nonimmigrant: Temporary immigration status of limited scope and duration that allows a foreign national to work in the U.S. for a specific purpose. The term may also be used to describe an individual in the temporary status.

Optional Practical Training (OPT): OPT is a 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 a full academic year and are currently enrolled in or completing an academic program (excluding students who are enrolled in or completing an English language training program). This is temporary employment for practical training directly related to the student's major area of study. OPT 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 DSO in the International Students and Scholars office prior to application.

U.S. Citizenship and Immigration Services (USCIS): U.S. Citizenship and Immigration Services is the federal agency within the Department of Homeland Security that oversees lawful immigration to the U.S.

III. STUDENT AND SCHOLAR VISAS AND STATUSES

A. 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 DSOs, Responsible Officers (ROs), and Alternate Responsible Officers (AROs) with the F and J visa programs but also provide support for international students in a variety of visa statuses.

B. 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 Professor, Research Scholar, and Short-Term Scholar

The J-1 classification is authorized for multiple purposes, including participating in teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or receiving graduate medical education or training. The specific J-1 category will be determined by the sponsoring University department and the International Students and Scholars office during application processing. Non-student categories available at the University include Professor, Research Scholar, Short-Term Scholar, and Student Intern. J-1 exchange visitors in the non-student categories are allowed to be employed by the University but employment is not required for these J-1 categories. Departments who are interested in sponsoring a J-1 professor, research scholar, short-term scholar, or student intern should discuss the process with the International Students and Scholars office.

J-1 professors, research scholars, short-term scholars, and student interns on campus requires close observation of U.S. Federal export control regulations. See Section VIII Export Control Information.

2. J-1 Student

The J-1 student category is a Nonimmigrant classification which allows students to study and participate in Academic Training in the U.S. as long as they are a properly registered full-time student and maintain their J-1 student status. Students in the J-1 student category are eligible to be employed up to 20 hours per week during the academic semester (no limit during official school breaks) at the school that issued the Form DS-2019. J-1 students with Form DS-2019 issued by the University must receive permission from the International Students and Scholars office prior to beginning employment at the University. J-1 students at the University with a Form DS-2019 issued by other institutions such as U.S. government sponsored programs (Fulbright, USAID, GlobalUGrad, etc) require permission from their sponsoring organization prior to employment at the University.

3. 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.

4. J-1 Process

The sponsoring Department is responsible for ensuring their exchange visitor complies with the University's J-1 process. Coordination with the International Students and Scholars office and completion of the below steps is required for any Department wishing to sponsor or bring a J-1

exchange visitor to campus. Failure to follow this process may result in the denial of University support for sponsoring the exchange visitor on campus and/or cancellation of an exchange visitor's SEVIS record and J-1 status in the United States:

- a.** Contact the UW Export Control Office to obtain clearance documentation to be provided to the International Students and Scholars office.
- b.** Collect additional information forms and supporting documents as required on the International Students and Scholars website and submit to the International Students and Scholars office via their online portal.
- c.** International Students and Scholars will issue the Form DS-2019 for J-1 exchange visitors. If the proposed J-1 visitor's Form DS-2019 will be issued by another organization, International Students and Scholars will issue a UW ID "W#" if requested and will provide general information for these visitors on their website.
- d.** The J-1 exchange visitor is required to complete and submit the online check-in to International Students and Scholars within 48 hours of their arrival in Laramie if UW ISS issued the Form DS-2019. Visitors with Form DS-2019 issued by another institution/agency are not required to check in with International Students and Scholars.
- e.** If an exchange visitor hosted by your department will arrive in the U.S. later than the DS-2019 program start date, contact International Students and Scholars, for further instructions. Failure to do so may result in visa denial or U.S. entry refusal for the scholar.

C. F-1

The F-1 Visa 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. Students on the F-1 student visa are eligible for on-campus employment up to 20 hours per week during the academic semester (no limit during official school breaks) at the school that issued the Form I-20 with no permission from the International Students and Scholars office. Any off-campus internship/employment (paid or unpaid) requires permission from the International Students and Scholars office, usually via CPT. This may also be used for on-campus internship in addition to the student's regularly allowed 20 hours of on-campus employment.

D. F-1 Optional Practical Training (OPT)

- 1. OPT Requirements** A student is allowed a maximum of 12 months of full-time OPT for each increasing degree level. This is usually done as post-completion OPT, though pre-completion OPT may be appropriate in some cases. A job offer is not required to apply for OPT and having a job opportunity does not expedite the adjudication. Students who complete a degree in a Department of Homeland Security recognized STEM degree and work for an eligible employer are eligible to apply for an additional 24 months of employment authorization, known as “STEM OPT,” at the end of their post- completion OPT period. OPT requires a recommendation by a DSO in the International Students and Scholars office. For additional information, please contact the International Students and Scholars office.
- 2. UW Employment and Benefits for Employees on OPT** UW welcomes employees who are working under F-1 OPT. Because federal OPT requirements and state benefit eligibility standards differ, the following is required for departments and employees to remain compliant with both.
 - a. UW Part-Time, Non-benefitted Employment.** To maintain OPT status, an employee must work a minimum of 20 hours per week in qualifying employment. UW permits part-time, non-benefitted employment under 19.5 hours per week. Employees working on OPT who wish to remain in a non-benefited position may do so only if they supplement their UW work hours with other qualifying employment outside UW in order to meet the federal OPT 20-hour requirement.
 - b. Departmental Responsibility.** Departments must ensure part-time benefited employees do not exceed the UW allowable work hours of 19.5 hours per week. If an employee on OPT intends to meet their 20-hour requirement solely through employment with UW, the department must hire the employee in a benefited capacity and ensure that total scheduled hours meet both federal and state requirements.
- 3. Export Control.** Hiring of an individual holding F-1 OPT or “STEM OPT” requires close observation of U.S. Federal export control regulations. See Section VIII Export Control Information.

E. Other Student Visas and Statuses

Many other visas and statuses allow employment by students while in the US. The most common other visa/status types at the University are A, L, E, asylee, and Deferred Action for Childhood Arrivals (DACA). Each status type has specific regulations regarding employment and may require specific work authorization for on and/or off-campus employment. Visa holders should be knowledgeable of their eligibility for employment. The International Students and Scholars office will provide support as appropriate in assisting these students with questions regarding their status and employment eligibility; consultation with outside counsel may be

needed in some cases.

IV. TEMPORARY WORKER VISAS AND STATUSES

The University may sponsor Temporary Workers for employment activities if the employee qualifies and the department agrees/for an employment-based visa or status.

Classifications available for sponsorship include:

A. H-1B Specialty Occupations

The H-1B Temporary Worker Nonimmigrant classification is designated by USCIS for non-U.S. workers in specialty occupations. An H-1B may be filed for a period of three (3) years at a time. Under current regulations, an H-1B visa is restricted to a total of six (6) years.

A position must qualify as a “specialty occupation” following USCIS’s classification requirements. Human Resources will determine if a job/position qualifies for sponsorship. In order to qualify for sponsorship, a position must meet required job criteria and the determined prevailing wage. If a position qualifies as a specialty occupation and a foreign national is selected for that position, the supervisor must contact Human Resources to begin the process to petition for an H-1B visa.

If a position does not qualify for sponsorship or if a college, school, or division declines to sponsor a position, efforts will be made to include this information in the posted job advertisement, prior to the collection of any applications for the position.

Financial obligations associated with sponsoring the H-1B include a petition fee, anti-fraud fee, and an optional premium processing fee. The sponsoring department or division for the petition is responsible for all required costs. Either the department or division or the Beneficiary may pay the optional premium processing fee or visa issuance fees. The University will not pay for, file, or sponsor derivative petitions or dependent filings. Sponsoring departments or divisions may not seek reimbursement for any fees from the Beneficiary.

The University of Wyoming can only sponsor the Beneficiary’s H-1B work authorization for the position and city listed in the petition. The H-1B work authorization does not authorize any other work outside of what is described in the H-1B petition. **The Beneficiary must notify Human Resources prior to making any changes to the employment conditions as listed in the H-1B petition, such as a change in job position details, worksite location, any increase or decrease in salary, changes from full-to part-time employment, or if concurrent employment with the same or another entity is sought.** Such changes may require H-1B and LCA processing by the University of Wyoming to remain compliant and for the Beneficiary to maintain proper status. If the employment relationship will be or is terminated, please contact Human Resources of the Office of General Counsel as soon as possible for further guidance. Additionally, nothing

in the H-1B petition or the statement in support of it modifies, abridges, or eliminates the employment-at-will relationship between the employer and the beneficiary.

Hiring managers should contact Human Resources for more information on H-1B matters. In some circumstances, Human Resources will recommend a meeting with the foreign national and the position's supervisor from their sponsoring department or division to determine if this category of sponsorship is appropriate.

Human Resources recommends communicating and/or starting the process to review and secure immigration sponsorship at the earliest possibility, typically at the offer stage and in some cases, sooner. Collaboration with Human Resources ensures that sponsorship determinations are completed in conjunction with the search at the most appropriate time and ensures efficiencies in maintaining compliance with those processes. Human Resources will file the petition at the earliest possibility and work with departments to adhere to appropriate hiring timelines while gauging USCIS's adjudication times.

Sponsoring an H-1B of an individual requires close observation of U.S. Federal export control regulations. See Section VIII Export Control Information.

B. Trade NAFTA (TN) Professionals

The TN Nonimmigrant classification is available as a provision of the North American Free Trade Agreement (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.

Departments or divisions should consult with the Office of General Counsel before hiring an individual seeking entry in TN status to assess if this is the most appropriate status for the individual.

Hiring of an individual holding TN status requires close observation of U.S. Federal export control regulations. See Section VIII Export Control Information.

C. O-1 Extraordinary Ability or Achievement

The O-1 Nonimmigrant classification 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 is the only office with the authority to facilitate the filing of an initial O-1 petition or sign Form I-129 in support of an O-1 request. The O-1 visa is employer specific; therefore, departments or divisions must consult with the Office of General Counsel and Human Resources before hiring an individual

who is already in O-1 status.

The University may sponsor an employee for O-1 status if the individual meets the criteria for the status and has a job offer from the University. Permission to proceed with an O-1 requires the express written consent of the appropriate dean or vice president.

Hiring of an individual holding O-1 status requires close observation of U.S. Federal export control regulations. See Section VIII Export Control Information.

D. E-3 Specialty Occupation Works from Australia

The E-3 Nonimmigrant visa 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.

Hiring of an individual holding E-3 status requires close observation of U.S. Federal export control regulations. See Section VIII Export Control Information.

V. PERMANENT RESIDENCY

A. The Office of General Counsel or designee 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.

B. The University may pursue one of the following employment-based permanent residency petitions:

1. EB-1(B) Outstanding Professors and Researchers
2. EB-2 Advanced Degree
3. EB-3 Skilled Workers and Professionals

C. Eligibility

1. An employee must meet the following criteria to be eligible for permanent residency sponsorship by the University:

a. Permanent employment or a job offer of permanent employment in one the following positions:

- i. Non-academic personnel with an administrator or administrative**

professional position as defined by Human Resources.

- ii. Tenure and tenure-track faculty members at the rank of assistant professor (or above).
- iii. Research professors and research scientists per University Regulation 2-1.
- iv. Non-tenure-track faculty members with a minimum 3-year rolling contract.¹

- b. Written approval of sponsorship and sponsorship costs by the appropriate dean or vice president.
- c. High likelihood of being approved for at least one of the employment-based permanent residency options outlined in Section VI.B.

2. **Extraordinary Circumstances**

To deviate from this Policy, a department or division must submit to the Office of General Counsel a written explanation detailing the reasons behind why the request is necessary. The reason for an exception to the Policy must relate to special circumstances that differentiate the particular employee (the Beneficiary) and not conditions that exist for a select portion of University employees or students. The written explanation must be signed by the appropriate dean or vice president.

An example of when the extraordinary circumstance process would be appropriate is when permanent residency is requested for staff positions not listed in Section V.C.

In general, extraordinary circumstances include:

- a. Hardship for the department or division that would impact its educational mission;
- b. Legitimate business purpose for pursuing the exception;
- c. Academic or research excellence;
- d. Procedural irregularity which is not the fault of the Beneficiary; and

¹ The University may consider this position “permanent” for the purposes of immigration, but this definition does not change the University’s standard terms of employment as expressed in University regulations, policies, or appointment letters.

- e. Avoidance of unforeseeable harm.
3. Faculty or staff interested in learning more about permanent residency options 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 the sponsoring department or division.

D. Costs

1. The sponsoring department or division for the petition is responsible for all related costs to filing the I-140 application. The department or division may not ask the Beneficiary for reimbursement or otherwise pass along the costs to the Beneficiary.
2. Filing fees for the I-485 Adjustment of Status and additional expenses related to Adjustment of Status will be responsibility of the Beneficiary.
3. If an academic department cannot incur the cost for a petition, the Office of Academic Affairs may be able to assist.
4. The Office of General Counsel will provide the foreign national employee and sponsoring department or division with an estimate of related costs.

E. Categories that Allow for Self-Sponsorship

There are pathways to permanent residency that do not require employer sponsorship. With regard to these cases, the University will not be the petitioner and 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 continuing employment with the University, the employee must inform Human Resources. These categories are as follows:

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

VI. SIGNATORY AUTHORITY

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

A. Department of Homeland Security

I-17	Initial School Certification Petition	Primary Designated School Official (PDSO), DSO within International Students and Scholars, and the University President
I-20	Certificate of Eligibility for Nonimmigrant Student Status	PDSO, DSO within International Students and Scholars

B. Department of State (Administered through BridgeUSA)

DS-2019	Certificate of Eligibility for Exchange Visitor (J-1) Status	ROs and AROs within International Students and Scholars
DS-3036	Exchange Visitor Program Application	ROs and AROs within International Students and Scholars, and the University President

C. Department of Labor

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

D. USCIS

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 or General Counsel
I-140	Immigrant Petition for Alien Workers	General Counsel or designee
	Proof of Employer's Ability to Pay Letter	Vice President for Budget and Finance
I-485 Supplement J	I-485 Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)	General Counsel or designee

I-907	Request for Premium Processing	Designee within Human Resources or General Counsel
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E. U.S. Immigration and Customs Enforcement (ICE)

I-983	Training Plan for STEM OPT Students	OPT employee's supervisor
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F. 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.

VII. DEPENDENT PETITIONS

- A.** 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.
- B.** 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.
- C.** Any applications for dependents are personal applications that the University is not responsible for. The University cannot advise on these forms or processes.
- D.** 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.

VIII. EXPORT CONTROL INFORMATION

A. Export Control Certification

Federal law requires the University to assess whether an export license is required as part of the Nonimmigrant Visa process. Some Nonimmigrant applications require the University to make a certification regarding the release of controlled technology or technical data to a foreign person subject to the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR). Even without a certification requirement, the University must ensure compliance with export control regulations for all foreign nationals. The hiring or sponsoring department or division is required to complete the relevant export control forms in partnership with the Export Control Officer for the University.

IX. GOVERNING LAW

- A.** If any legislation or case law at the state or federal level provides guidance contrary to any guidance provided in this policy, the state or federal law will prevail and the contradicted portion of this guidance will no longer be in effect. The University of Wyoming President will have the authority to amend this policy to comply with current law without going through the vetting 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: <http://www.uwyo.edu/regs-policies>

Associated Regulations, Policies, and Forms: None

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