



## Procedure 6.18: Sponsorship of Employment Visa for Foreign National Employees

Volume 6

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### I. PURPOSE

This procedure provides an overview of the legislative requirements and visa options for new and current foreign national employees. This procedure also announces and explains Alabama A&M University's (AAMU) position regarding the categories of employment that are eligible for AAMU sponsorship.

### II. PURPOSE OVERVIEW

Recently immigration practices have come under heightened scrutiny from the United States Citizenship and Immigration Services (USCIS) and others. As a result, it has been determined that some changes are required to the University's practices. When AAMU hires a foreign national employee, the university is subject to federal laws and regulations. Success in obtaining approval of petitions for immigrant is dependent upon responsible and full adherence to law, regulation, and procedures. Failure to adhere to such laws subject the University to potentially serious sanctions for employing individuals who are not authorized to work in the United States.

### III. VISA PROCESSES

#### J-1 Visiting Scholars and Professors

1. **Sponsorship** - AAMU provides sponsorship for J-1 Visa.
2. **Criteria and Appointment**- The Office of Community College Relations and Global Initiatives at AAMU authorizes documents only for professors, research scholars, short-term scholars and specialists under the J classification that will engage in the activities listed below. Hosting an international visitor for these activities makes the visitor, the department, and AAMU a participant in the Department of State's J Exchange Visitor Program. The DS-2019 is the document issued by the Office of Community College Relations and Global Initiatives programs to any person that has been approved to participate in the J program. When inviting a J-1 visa holder who is sponsored by an outside agency/university, please contact the Office of Community College Relations and Global Initiatives.

The J-1 visa is for individuals who are coming to the U.S. for a short-term program to participate in the following activities:

- a. Research
  - b. Training
  - c. Teaching
  - d. Observing
  - e. Consulting
3. **Procedure:** For more information on how to invite an international visitor to come to AAMU, please contact the Office of Community College Relations and Global Initiatives.
  4. **Purpose:** The primary purpose of the J-1 Exchange Visitor Program is to foster international exchange; therefore, the invited visitor must be affiliate in some manner with a partner institution or organization abroad. This program is to not be used solely for the purpose of employment. Potential hosts seeking to employ a full-time Postdoctoral Fellow, Research Fellow, or any other faculty position should see the information about the H-1B visa classification.
  5. **SEVIS Fee and Visa Fees:** Prospective J-1 exchange visitors are required to pay certain fees in order to obtain the J-1 visas and enter the United States.
    - a. **SEVIS Fee:** The Department of Homeland Security charges all new J-1 scholars and professors a fee to cover the costs of the Student and Exchange Visitor Information System (SEVIS). The Office of Community College Relations and Global Initiatives will provide J-1 visitors with instructions on how to pay the SEVIS fee once the DS-2019 has been processed.
    - b. **Visa Fee:** In addition to the SEVIS fee, the prospective J-1 Exchange Visitor must pay certain visa fees. The fee schedule is on the Department of State website.
    - c. **The University is not responsible for any fees under this J-1 visa program**
  6. **Health Insurance Requirement:** All visiting scholars as well as accompanying dependents are required to obtain health insurance while in the United States.

### H-1B Visa Process

1. **Sponsorship-** AAMU provides sponsorship for H-1B visa.
2. **Criteria and Appointment** – Generally the position is a non-temporary professional position which requires specialized training. The H-1B Temporary Worker visa allows foreign nationals to work in the United States in specialty occupations for a period of up to six years. The hiring department can petition for H-1B visa status for positions that satisfy the required degree level in the area of specialization. The offer of employment must be in concurrence with the College Dean and/or Department Chairperson or Supervisor to clarify the University's responsibilities of sponsorship, funding liability and terms of employment to ensure compliance with University procedures and the USCIS regulations. Generally, the initial offer of employment must be for no less than one calendar year and no more than three calendar years.
3. **Procedure-** In order to begin the H-1B process, the Employment Visa Request Form must be completed. The form can be found on the Office of Human Resources website. For newly hired employees to the university, the Employment Visa Request Form should **only be completed** after all the following conditions have been met:
  - o The hire form has been fully approved in the online employment site (Interview Exchange).

- A positive background check has been returned to the Office of Human Resources.
  - An official employment offer has been made and the individual has accepted the official employment offer.
4. **Fees for Application/Petition** -All costs associated with the H-1B petition are to be paid by the sponsoring University's department. Personal funds cannot be accepted from the beneficiary or any University employee, and checks must be drawn from active University accounts. Application/petition fees are under the administration of USCIS and subject to change at any time.
    - Attorney fees (rates depend on attorney and check made out to Attorney)
    - **For all the below fees, All checks must be separate and made payable to U.S. Department of Homeland Security. A complete fee schedule can be found on the USCIS website at: <https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker>**
      - Anti-fraud fee for all new H-1b petitions
      - Fee for all H-1B petitions
      - Optional fee for Premium Processing
  5. **Premium Processing Option**- This is **NOT** a mechanism for expediting the Prevailing Wage Request or Labor Condition Application through the Department of Labor, which does not offer an expedited processing service. The USCIS will not allow employers to begin the employment of foreign national visitors without first having the proper employment authorization documents verifying eligibility. If the hiring department wishes to employ a foreign national visitor who has limited or no legal documentation to begin employment prior to the six months or so required for regular application processing time, the department should consider the premium processing option. In order to expedite the H-1B petition, USCIS requires an additional fee for premium processing option. For a detailed definition of the premium process option, please see Section V of this procedure.
  6. **Timeframe**- On average it takes about 4 to 5 months to obtain an H-1B visa. Please note that H-1B petitions generally cannot be processed more than 6 months in advance of the employment start date. We recommend that H-1B requests be submitted to the Office of Human Resources 6 months in advance.
  7. **Educational Credentials**- The required educational credentials from the prospective H-1B employee must satisfy the educational qualifications and credentials as required (not preferred) for the position. If the H-1B employee has credentials in a language other than English, it is the H-1B employee's responsibility to provide an official evaluation of the document in question from an accredited U.S. credential evaluation agency. The employee is solely responsible for the cost of the evaluation.
  8. **Employee Salary Requirement**- The university department must agree to pay employees who have H1-B visas at least the actual wage being paid to all other individuals with similar experience or qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.
  9. **Ongoing Department Responsibilities**-To ensure H-1B Compliance, hiring departments are responsible for ensuring that the H1-B employee's job duties remain in compliance with USCIS regulations. Substantial changes in job duties or FTE may require the university to file an H-1B amendment with USCIS. Substantial changes include, but are not limited to promotions, demotions, changes in job duties, responsibilities, changes in appointment percentage (FTE), decreases in hours, salary, benefits, changes in physical work location and moves/transfers to other university's departments.
  10. **Department Dismissal**-As required by USCIS, if the department dismisses the employee before the end of the authorized period of H-1B employment, the department will be

responsible for paying the reasonable costs of return transportation of the employee to the employee's last place of foreign residence.

11. **Address Change-** All international employees are required by law to keep their addresses update with the USCIS. If there is a change of address, Form AR-11 (change of address form) must be completed and mailed to the USCIS within 10 days of moving. Failing to report change of address may jeopardize the employee's legal immigration status.

### Lawful Permanent Residence (LPR)-Green Card Process

1. **Sponsorship** - AAMU provides sponsorship for Green Card. Generally AAMU does not approve the processing of LPR petitions until the person has completed a minimum of one year of employment.
2. **Criteria** –faculty employee must met the following criteria in order to eligible for AAMU sponsorship for U.S. Lawful Permanent Residency: Full-time faculty members must hold faculty rank of Assistant Professor or above (tenure track or tenured faculty). Non-tenure track and temporary faculty maybe eligible in rare circumstances. The faculty member must have been at AAMU in H-1B or TN visa classification for a minimum of one year in order to be eligible for LPR sponsorship.
3. **Employer Sponsorship is not required-** Departments and/or individuals shall inform the Office of Human Resources of the filing with the USCIS of any of the following LPR preference categories for which the University has no responsibilities, since no employer sponsorship is required:
  - EB-1(A) is for person of extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who will prospectively be of substantial benefit to the United States.
  - EB-1(C) for multi-national executives and managers who have been employed outside of the United States for at least one year within the three years immediately preceding entry into the U.S. and are or will be employed in an executive or managerial capacity for that same employer or its subsidiary, branch, or affiliate in the U.S.
  - EB-2 NIW (National Interest Waiver) is for aliens of exceptional ability in the sciences, arts, or business whose presence and activities in the U.S. are in the national interest. The EB-2 NIW green card processing time is typically between 3 to 9 months. The processing time greatly depends on the assigned USCIS Service Center and the adjudicating officer.
4. **Employer Sponsorship is required-** Approval, signature, and application must be submitted to the USCIS and in some cases the Department of Labor (DOL), for the following LPR preference categories. Consideration may be given to the EB-1(B) provided the following criteria are met:
  - **EB-1(B)** is for outstanding researchers and professors who are internationally recognized, have a minimum of three years of experience, and have been offered a tenured, tenure-track, or long-term research. No labor certification is required. A copy of the job offer letter used to hire the employee is required. Applications are filed directly with the USCIS.
    - a. The individual must have some percentile of teaching responsibilities.
    - b. The advertisement for the position must have appeared in a PRINT ad in the Chronicle of Higher Ed or appropriate professional journal.

- c. The application must be submitted to the DOL within 18 months of the date of the job offer.
  - o **EB-2**-If the 18 month window required is missed for tenure track employee, the EB-2 category **must** be used. EB-2 is for members of the professions holding advanced degrees or aliens of exceptional ability in the sciences, arts, or business. Permanent Labor Certification and a copy of the job offer letter used to hire the employee are required. This can be for positions that require only a Bachelor's or Master's degree or for recent Ph.D. graduates. **More extensive advertising is required. The department will be required to interview any individuals who are citizens or permanent residents who have the minimum requirements for the position.**
  - o **EB-3** is for skilled workers, professionals, and other workers. It is also for professional who do not hold advanced degrees, but who hold licenses, certificates, or other professional qualifications. Permanent Labor Certification and a copy of the job offer letter used to hire the employee are required.
- 5. **LPR Application Procedure**-The following steps must be followed to be considered for U.S. LPR status by AAMU:
  - o The department chair/head seeking to sponsor the foreign national should access the Office of Human Resources website and complete the Employment Visa Request Form and forward the approved Form to the Office of Human Resources.
  - o Upon receipt of the approved Employment Visa Request Form, the Office of Human Resources will review the university procedures to ensure that the request is within the guidelines.
  - o Once review is completed, the department will be contacted.
- 6. **Specific Procedures for Cases Involving PERM (Permanent Electronic Review Management System) or Labor Certification (Only Required for EB-2)**- The first step in the permanent residence process is called "Labor Certification" and results in a certification from the U.S. Department of Labor (DOL) that there are no U.S. workers qualified and available to fill the position the alien will fill. This step requires the University to test the labor market for qualified U.S. workers. If the University can demonstrate that no workers are available that meet the minimum entry requirements for the position for which labor certification is sought, then DOL will certify that a particular occupation may be filled on a "permanent" basis by a foreign worker. The University is under no obligation to hire a U.S. worker during the recruitment process, but a labor certification application cannot be filed with DOL if a qualified U.S. worker responds to the recruitment efforts. Also, the minimum job requirements cannot be tailored to meet the alien's qualifications and the alien generally cannot use "on-the-job" training towards meeting the minimum requirements. A new prevailing wage must also be completed. Advertising Requirement for PERM cases is **mandatory** for all applications involving professional occupations that are being filed under PERM standard processing, and they must be conducted at least 30 days, but not more than 180 days, before the filing of the application with the exception of bullet point #4.
  - o 30 days State Workforce Agency (SWA) job order
  - o Two (2) print advertisements-one in a newspaper for two consecutive Sundays and one in a professional journal.
  - o Provide internal posting notices to departments – 10 days
  - o Three (3) separate additional recruitment steps out of a list of ten as follows:
    - a. Job fair(s)
    - b. University's website job opportunities page
    - c. Internet job search company/organization other than University's website
    - d. On-campus recruiting at local college or university

- e. Trade or professional organizations
  - f. Private employment firms (e.g. headhunters)
  - g. Employee referral program, if it includes identifiable incentives
  - h. A notice of the job opening at a local college/university campus placement office, if the job requires a degree but no experience
  - i. Local and ethnic newspapers, to the extent that they are appropriate for the job opportunity
  - j. Radio and television advertisements
- o. After evaluating and interviewing U.S. applicants, the department must prepare a recruitment report describing its recruitment effort and results justifying why the U.S. applicants did not meet the minimum qualifications advertised. The completed evaluation should be submitted to the Office of Human Resources.

The second step in an employment-based permanent residence case is for an Immigrant Petition for Alien Worker (Form I-140) along with the certified Form ETA 9089 with USCIS.

7. **Fees for Application-**Federal law requires that the University/sponsor pay for all petition costs associated with the Labor portion of a green card. A detailed listing of fees, can be found on the USCIS website at <https://www.uscis.gov/file-online/uscis-immigrant-fee> . For each case, there is currently an additional fee. The additional fee is paid by the employee **UNLESS** prior arrangements are made. No fees are paid for the portions of the bill that pertain to family members. It is the responsibility of each hiring department to make this perfectly clear to the employee when hiring a foreign national. **This is taxable to the employee.**

#### TN Visa Process

1. **Sponsorship-**TN visas does not require sponsorship. TN visas do not require a petition filed by AAMU to the United States Citizenship and Immigration Services (USCIS) on behalf of the employee. A TN visa does not confer permanent residence. Therefore, the use of a TN visa to hire tenure track faculty members must be carefully evaluated prior to a final offer.
2. **Work Authorization Period-** The TN establishes work authorization for an initial period of up to three (3) years which may be renewed for an additional three (3) years. The TN visa is not portable, and individuals in the U.S. on a TN visa are required to get a new visa if they change employers.
3. **Procedure-** Whether the hiring process involves a faculty member, post-doctoral, administrative/professional or other university staff position, there are several steps that all position must complete.
  - a. There must be a vacant position and the position must be posted through the Office of Human Resources.
  - b. There must be an established search committee.
  - c. The hire form must be fully approved in the online employment site (Interview Exchange).
  - d. A positive background check has been returned to the Office of Human Resources.
  - e. An official employment offer has been made and the individual has accepted the official employment offer.
4. **Extending the TN Visa-** The process generally begin 3-6 months in advance of the end of the employee's work authorization. The employee will have to provide a letter

from the hiring department on departmental letterhead, indicating the department's desire to continue their employment. The letter should be submitted to the Office of Human Resources. The Office of Human Resources will assist the employee with extending the visa once the department letter has been received.

#### **IV. LEGAL ADVICE & ASSISTANCE**

The Office of Human Resources staff do not act as attorneys or provide legal advice for purposes of immigration to the U.S. For legal advice, non-immigrants and immigrants are urged to seek the services of appropriate legal counsel. If employees wish to use the preferred immigration attorney for the University, please contact the Office of Human Resources.

The Office of Human Resources will not contact attorneys without expressed written authorization from the applicant and approval from the chairperson and/or Dean of the department involved. Fees and fee schedules may vary depending on each case. Alabama A&M University and the Office of Human Resources make no claims or otherwise as to fees and costs involved, such information should be sought directly from the attorney to be used by the employee. All Alabama A&M University employment based non-immigrant and immigrant petitions are petitions for the employer (AAMU). Only the Office of Human Resources is authorized to sign any immigration petitions on behalf of Alabama A&M University. The petition is controlled by the University. The employee is the beneficiary of the petition. The University can elect to withdraw any immigration petition at any time for cause or due to cut backs in funding. All AAMU sponsored immigration petitions related to employment and or permanent residency require specific internal procedures to assure that the paperwork is in compliance with not only US immigration regulations but also with the university's procedures.

#### **V. DEFINITIONS**

- 1. Advanced degree**-Any academic or professional degree or foreign equivalent above the U.S. baccalaureate. In some cases, a baccalaureate plus five years of appropriate experience can be counted as a master's degree.
- 2. Foreign National** –A person who is not a citizen of the United States and who is a citizen of a foreign country.
- 3. H-1B** – A visa classification permits a foreign national to work in the United States for a temporary period. It is available for offers of employment that are in a specialty occupation. A person may hold H1B status for a maximum of six years, and it may be issued in increments of up to three years by the USCIS. The individual cannot gain an H-1B visa on his or her own. The University must obtain process (i.e. prevailing wage and labor condition application) certification from the U.S. Department of Labor (DOL) and employment authorization approval from the United States Citizenship and Immigration Service (USCIS). For purposes of employment, the university has the burden to meet federal requirements to sponsor and apply for H-1B status on behalf of a foreign national visitor.
- 4. Nonimmigrant status**- This status is for people who enter the U.S. on a temporary basis-whether for tourism, business, temporary work, or study. Once a person has entered the U.S. in nonimmigrant status, they are restricted to the activity or reason for which they were allowed entry. Some people may have more than one visa in their passport, but they can only be admitted into the U.S. in one type of nonimmigrant status at a time. Most nonimmigrant visas are issued only to applicants who can demonstrate their intentions to return to their home country.
- 5. Immigrant status**-This status is for people who live permanently in the United States. Synonymous terms for immigrant status are Permanent Resident, immigrant, green card

holder, and resident alien. Gaining immigrant status can be a lengthy and complex process that requires close consultation with an immigration attorney.

6. **Permanent residence (PR)** - This is a status granted by the U.S. government to citizens of other countries. It allows an individual to remain permanently in the U.S. The process is also known as obtaining a "green card" or "immigrant visa." Permanent residence is not the same as U.S. citizenship, although permanent residents may become eligible to become "naturalized" U.S. citizens after a certain number of years as a permanent resident. The petitioning process is lengthy, involving up to three government agencies, and the final decision to grant permanent residence must be made by the USCIS.
7. **Premium Processing-** An optional fee which allows employers the opportunity to process and receive an adjudicated decision within a 15 day period from receipt of H-1B applications as an expedited services. Premium Processing is the expedited service only promises a response to the petition within 15 days, not an approval. If for some reason the USCIS decides that additional information is required, a "request for evidence" (RFE) may be the response. Approval is not guaranteed within 15 days – just a response. If an RFE is requested, the hiring department will be notified by the Office of Human Resources and the 15-day clock will start again when USCIS receives the requested additional evidence.
8. **United States Citizenship and Immigration Services (USCIS)** is the government agency that oversees lawful immigration to the United States.
9. **Student and Exchange Visitor Information System (SEVIS)** is a central database that manages information related to visitors' immigration status while in the United States.
10. **TN** is a nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level. The minimum degree requirement is a bachelor's degree.