Hiring International Employees:
Model Practices and Key Topics in Creating an
Immigration Sponsorship Program

By Dena Neese
ABOUT THE AUTHOR

Dena Neese has worked at Washington State University’s Office of International Programs, where she handled faculty and staff immigration work. She has also practiced immigration law at both a small boutique law office and a corporate immigration law office in Phoenix, Arizona. Her immigration law experience spans twelve years. Neese is a graduate of the University of Arizona College of Law, where she participated in the Immigration Law Clinic. She has been a regular presenter at NAFSA conferences and currently resides in DeKalb, Illinois. She can be reached at denaneese@gmail.com.

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INTRODUCTION

This publication identifies key topics and model practices for institutions of higher education to consider when forming and reevaluating immigration sponsorship policy, or the practice of sponsoring foreign national faculty, scholars, and employees with an immigration status. The publication discusses both temporary and permanent immigration sponsorship, and addresses issues related to the most commonly used temporary nonimmigrant and permanent immigrant visa categories.

Discussions include:

- why your institution should have an immigration sponsorship policy, and the benefits and challenges in sponsoring foreign national faculty, scholars, and employees with an immigration status;
- how you can create an immigration sponsorship program that works for your institution;
- what to consider when deciding on program parameters, key offices to carry out program responsibilities, and whether to outsource work to outside counsel;
- when you should reevaluate a current sponsorship program;
- policies you can learn from at institutions across the country; and
- temporary and permanent employment-based immigration categories that your institution should consider.

WHY YOUR INSTITUTION SHOULD HAVE AN IMMIGRATION SPONSORSHIP POLICY

Under current U.S. immigration law, a U.S. employer wishing to hire a non-U.S. citizen or non-U.S. worker who does not possess independent work authorization must proactively sponsor the person to work, either temporarily or permanently, under one of the prescribed nonimmigrant or immigrant visa classifications in the Immigration and Nationality Act (INA). This is true for both foreign nationals who physically reside in the United States in a visa classification that does not allow for work authorization with your institution, and for foreign nationals who are physically outside the United States, and will potentially request admission into the country to work.

In all cases where your institution is the sponsor or petitioner, the foreign national can only proceed to enter the United States or work after you take certain proactive steps. In many cases, you must first file and receive an approved petition from the U.S. Citizenship and Immigration Services (USCIS) before a foreign national in the United States can begin to work for your institution, or before a foreign national outside of the United States can apply for a visa stamp to request admission into the United States to begin to work.

In other cases, a foreign national can take certain employer-issued documents to a U.S. consulate to obtain a visa stamp to enter the United States, or may directly take the documents to a U.S. port of entry to request admission into the United States to work.

Typically, your institution would first sponsor a foreign national with a temporary, nonimmigrant visa petition that allows him or her to work for a limited duration of time. Temporary nonimmigrant work status does not lead to permanent residence. Once the foreign national is working in a temporary nonimmigrant status, however, your institution might choose to sponsor him or her with permanent residence. Alternatively, the foreign national may apply independently for permanent residence in a category that allows him or her to self-petition. The permanent residence process can take time, even several years in some cases, depending upon the applicable visa category. Institutions typically continue to extend a foreign national’s temporary, nonimmigrant status, assuming it allows for “dual intent,” until the foreign national becomes a permanent resident. A permanent resident no longer needs an employer sponsor, and is free to work for any U.S. employer, or to not work at all.
Benefits and Challenges of Immigration Sponsorship

Benefits

There are several benefits to establishing an immigration sponsorship program. For example:

- An immigration sponsorship program allows your hiring units to recruit, hire, and retain top candidates with very specialized or hard-to-find skills and backgrounds, even when these candidates are foreign nationals requiring immigration sponsorship.

- A sound, clear policy that is readily available and made known to all relevant constituents allows for consistency and efficiency in handling international hiring questions and matters.

- Hiring foreign nationals promotes internationalization, as it brings faculty, scholars, and staff from around the world to your campus. Your institution can include this diverse group in its comprehensive internationalization programming areas, such as education and learning, community outreach, international recruiting, globally-focused curriculum development, and similar initiatives.

- A policy that includes permanent residence sponsorship promotes long-term employee retention and overall employee satisfaction. (Permanent residence sponsorship for the employee commonly leads to permanent residence status for the employee's spouse and children as well.)

Challenges

While maintaining an immigration sponsorship program offers many benefits to your institution, it also brings challenges. For example:

- Immigration casework can be challenging for university staff to handle in-house. Most employers retain immigration counsel to handle their immigration casework, which is detailed, legal, and specialized in nature. Moreover, the stakes involved are always high, since a case's outcome means that the individual either can or cannot begin to, or continue to, work. However, many institutions of higher education rely upon non-attorney, in-house advisers, with varying levels of training in the field, to perform some or all of their employment-based immigration work. While advisers can obtain advice from their office of legal counsel, internal legal counsel is generally not involved in the day-to-day casework, nor do they usually have in-depth knowledge of immigration law. Thus, advisers are often faced with complex legal questions and issues and may not have access to the necessary resources or legal knowledge to best handle them.

- It can be costly to file certain types of nonimmigrant and immigrant visa petitions with the USCIS. For USCIS case filing fees, go to www.uscis.gov and click on the “Forms” tab. Additionally, if you outsource some or all of your immigration work, it can be costly to retain outside counsel. In accordance with federal regulations, your institution must pay all fees, including attorney fees, associated with the filing of an H-1B nonimmigrant petition and a permanent labor certification, and cannot pass these fees along to the foreign national employee. (Additionally, many institutions have decided on policy grounds that they will pay all fees associated with the preparation and filing of other case types, where the institution is the petitioner.)

- While your institution might expend significant resources on performing immigration work in-house or on retaining outside counsel, immigration sponsorship in no way guarantees employee retention. Your institution cannot require the sponsored employee to remain with it for any period of time, based upon sponsorship or any other reason.

- No case, no matter how routine, is guaranteed approval, and your institution does not receive the government filing fees or attorney fees back if a case is denied.

- A sponsorship program requires significant flexibility, and at times deviation from your institution’s normal business practices. Campus constituents often view immigration rules and regulations as illogical, burdensome, and confusing, so advisers may find it challenging to integrate immigration-related processes and requirements into your institution’s normal hiring practices and procedures.
A clearly defined and readily available immigration sponsorship policy allows for clear, consistent, and efficient hiring practices as they pertain to hiring international employees. There are several ways an employer can sponsor a foreign national to work, so you must decide which position types to support with sponsorship, and which visa categories to use. Importantly, the law does not require an employer to sponsor anyone. Thus, you might choose not to sponsor certain position types, and not to use certain visa categories. Your institution may prepare certain case types in-house, while outsourcing other case types. Moreover, under federal immigration law, at times you cannot easily—and sometimes cannot at all—sponsor a position or person under a particular visa category. Depending upon the visa category and situation at hand, sponsorship can be routine, with minimal costs, or it can be complex and resource intensive, with many possibilities in between. Thus, your institution should carefully consider when and how it wishes to support sponsorship, so that it can readily handle time-sensitive international hiring questions and matters in a sound and consistent manner.

FORMING A SPONSORSHIP POLICY THAT WORKS FOR YOUR INSTITUTION

Before your institution creates or reevaluates its sponsorship policy, it should make the following institution-specific determinations:

Key stakeholders to participate in forming and vetting the policy. By involving major stakeholders in forming policy, university leaders and administration become familiar with your institution’s sponsorship policy and with those working “in the trenches,” performing the day-to-day work. Generally, stakeholders will include the following:

1. Office with authority to approve your institution’s immigration sponsorship policy;
2. Office with program oversight;
3. Office with primary responsibility for performing day-to-day work;
4. Your university’s legal counsel, since much of the work is legal in nature;
5. Your human resources office, since much of the work at its core is about how to hire certain employees; additionally, any labor certification/permanent residence work involves employment searches and the recruitment process;
6. Offices overseeing the position types that the policy covers; for example, the offices that oversee research faculty, tenure-track and teaching faculty, and other professional staff;
7. Offices that will participate in any case approval or vetting process that the policy may include; and possibly
8. Representatives from a frequent-user college or department, especially if colleges and departments will expend significant resources and time in support of the sponsorship program.

Available institutional resources for an immigration sponsorship program. Your institution should evaluate whether it has resources to hire adequate staff with the necessary expertise, and to purchase and maintain relevant technology. If sufficient resources are not available to support a program as envisioned by those forming it, then consider whether it makes sense institutionally to charge a fee for services to cover personnel, technology, and other resource costs. Alternatively, if there are not sufficient resources in-house to complete the casework, determine whether outsourcing some or all of the employment-based work to an outside attorney is a viable option. An immigration sponsorship policy cannot be all things to all people, and so your institution must make difficult decisions on what positions to support with sponsorship, given the resources available both internally and externally.

Nature of your institution’s job applicant pool, now and into the near future. Those forming policy should learn about university hiring trends, since your institution’s hiring needs should drive the parameters of its immigration sponsorship policy. Particularly:

1. Which hiring units consistently cannot recruit sufficient qualified applicants to fill particular positions;
2. Which hiring units consistently receive large numbers of applications from qualified foreign nationals for particular positions;
3. Whether there are university initiatives or strategic plans that will likely create a need to hire more foreign nationals in a particular area in the near future; and
4. whether, alternatively, there are particular positions where your institution routinely recruits large numbers of qualified U.S. workers.

**How university offices can most effectively collaborate to support a sponsorship program.** Some of the key offices that the staff performing the day-to-day program casework should collaborate with are:

1. Your institution’s legal counsel office, regarding both difficult individual case issues and questions, and how your university should respond to changes in immigration law and federal agency directives that impact the program as a whole.

2. Human resources office, regarding a host of matters, including:
   a. potential salary increases to meet H-1B prevailing wage requirements;
   b. changes in position details, such as job titles, appointment dates, and position descriptions, when necessary;
   c. potentially tricky I-9 issues regarding foreign national employees; and
   d. hiring and recruiting as they pertain to the labor certification permanent residence process.

3. Hiring units, regarding hiring questions, new case evaluations, and gathering appropriate documentation and information about both the position and the foreign national to prepare a case.

4. Offices that participate in the immigration case vetting/approval process, if this is part of the sponsorship policy.

5. Office that oversees your institution’s export control requirements, regarding the export control attestation for each H-1B case filing.

**Whether your institution will support flexible hiring practices to accommodate for the added layer of federal immigration rules, requirements, and procedures.**

As mentioned previously, many immigration rules and regulations do not appear “logical” to most, and may be outside the norm of your university’s usual business practices. To successfully navigate the U.S. immigration system, your institution must be flexible and accommodating in handling certain types of immigration cases.

A few common examples where an immigration case will require special attention are:

1. Potential start date delays with any visa category. All visa categories require flexibility in the start date, since delays regularly occur in the USCIS petition approval process, or with the U.S. consulate visa issuance process.

2. H-1B nonimmigrant matters. The prevailing wage requirement can lead to wage inequality. Your institution must pay the actual wage of the position offered to the H-1B worker, or the prevailing wage, whichever is higher. You obtain a prevailing wage determination using a survey acceptable to the U.S. Department of Labor (DOL), or from DOL itself. If the prevailing wage determination is higher than the actual or offered wage for the position, which happens regularly, you must increase the offered wage to meet the prevailing wage. This can mean the H-1B worker’s wage will be higher than the wage of his or her U.S.-worker counterparts, and higher than the wage you originally agreed to pay the H-1B worker in the offer letter.

H-1B workers generally cannot be furloughed and maintain status. Your institution must pay the H-1B worker the wage listed in the H-1B petition, which means that generally, an H-1B worker cannot be furloughed, or asked by an employer to take time off and not be paid for that time, since this means they would not receive the wage listed in the H-1B petition. So, if furloughs occur, your institution cannot simply treat H-1B workers the same as the rest of its workforce and assume they will maintain status.

Before filing an H-1B petition, your institution must make a deemed export attestation regarding the release of controlled technology or technical data to the potential H-1B worker. This requires time and resources from the office that handles export control/research compliance issues. If your institution does not have such an office, you must decide who can appropriately make this determination.

3. Labor certification/permanent residence matters. To sponsor an employee with permanent residence in conformity with the labor certification process,
you must publish an advertisement in a venue approved by the Department of Labor, which your institution might not normally use to recruit for this type of position. The advertisement must include certain DOL-prescribed language, which your normal hiring practices might not normally require.

If your institution wishes to proceed with labor certification for a current employee and the original search did not meet DOL-prescribed labor certification requirements, then you must conduct a new search, or re-test the labor market. Your institution must consider applicants from the new search for the position even though the position is already filled, albeit temporarily, by the foreign national it wishes to employ permanently. Many institutions find this process awkward and disingenuous to persons who apply to the re-advertised position.

DETERMINING PROGRAM PARAMETERS AND KEY RESPONSIBILITIES

After evaluating available institutional resources, hiring trends and needs, and the ability of relevant offices to work together and exercise flexibility, stakeholders must decide who your institution will sponsor and who will be responsible for the work. Stakeholders must decide sponsorship parameters, or which positions your institution will sponsor, and under what circumstances. Your institution’s available resources to support an immigration sponsorship program and its hiring priorities greatly

**Program Parameter Determinations**

Considerations include:

1. Positions to support with temporary nonimmigrant sponsorship, often including position titles from some of the following job categories: temporary faculty positions, permanent faculty positions, and non-faculty professional positions.

2. Positions to support with permanent residence sponsorship, often including position titles from some of the following job categories: tenured or tenure-track faculty positions that include some teaching duties, other research or teaching faculty positions that meet the “permanent” requirement as set forth in the Immigration and Nationality Act, and non-faculty professional, permanent positions.

3. Which visa categories to use. The list often includes some or all of the following nonimmigrant visa categories: H-1B, J-1, O-1 E-3, and TN, and some or all of the following permanent sponsorship/immigrant visa categories: standard labor certifications, special handling labor certifications, outstanding professor or researcher petitions, and extraordinary ability petitions.

4. Which positions not to support with sponsorship, or which employment-based visa categories not to use. When forming policy, your institution should take the time to consider whether it might not wish to sponsor a particular position type with immigration status, or whether it might not wish to use a particular employment-based visa category. This may be a cost-benefit analysis, based upon your institution’s resources and hiring priorities, or it may be a risk tolerance evaluation. Either way, you should keep in mind that while sponsorship is critical to hiring a highly specialized, professional workforce, there are legitimate reasons why your institution might choose to limit its policy.

5. Qualifications, if any, to place on temporary or permanent sponsorship. For example, while the policy may allow some position types to immediately proceed with permanent residence sponsorship, it may require a waiting period and/or vetting process before persons in other position types can proceed with the permanent residence process.

6. How to build flexibility into the sponsorship program. A sound policy leaves room for exceptions, as those forming policy cannot anticipate every scenario where your institution will want to sponsor a foreign national with a temporary or permanent immigration status. Leaving room for flexibility facilitates sponsorship in potentially unique situations.
impact the breadth of the program parameters. Stakeholders must also determine who will carry out the main program functions, including overall program oversight, the day-to-day work of the program, and whether your institution will outsource any work to outside counsel.

**Determining Office to Perform Main Program Functions**

The office that will oversee the sponsorship program and perform the day-to-day work of the program will vary from institution to institution. Historically, most institutions have housed their employee immigration sponsorship programs within the office of international programs, in either an international scholar services office, or a combined international students and scholar services office. However, some institutions house their employee immigration sponsorship programs within human resources or an office of legal counsel. All of these models have their benefits, and any one of them can work well for a particular institution. In determining which model will work best for your institution, consider the following:

1. At its core, the purpose of an employment-based immigration sponsorship program is to perform the relevant immigration casework to facilitate the hiring and continued employment of personnel, either temporarily or permanently, pursuant to the institution’s immigration sponsorship policy guidelines. While this work includes engagement with international persons, it relates to hiring and employment matters. Much of the work involves protecting U.S. workers, determining wages, dealing with position searches and the recruitment process, and meeting various DOL requirements. Moreover, the work involves performing casework in the very dynamic, ever-changing field of immigration law.

2. While the core purpose of the program is to facilitate the hiring and continued employment of foreign nationals requiring sponsorship, a cultural programming component to the sponsorship program is also important. Your institution may have special events for international faculty, scholars, and employees, or you may direct particular programs, resources, or services to this population. However, you might consider treating cultural programming as somewhat independent and distinct from the immigration casework preparation. For example, different staff, or even a different office, might be responsible for the cultural programming work, especially if the hiring/employment casework is handled within a human resources or legal counsel office.

3. Historically, some institutions have treated international student work and international faculty, employee, and scholar work as similar, and so have housed them together. While many of the same concepts of immigration law and policy apply to both, the nature of the work and the daily issues that advisers face are very different. Thus, your institution may wish to revisit whether this is the most effective, efficient way to handle the work, or whether other models might make sense. If your institution houses international student work and international faculty, scholar, and employee work together, then it should evaluate how it can best meet the needs of these very different programs.

4. The J-1 Exchange Visitor program is fundamentally different from the nonimmigrant work visa categories (H-1B, TN, E-3 and O-1) and the employment-based permanent residence categories used by institutions (see Section 8 herein for more detailed information on the J-1 Exchange Visitor category). Thus, if your institution decides to house its nonimmigrant work visa and permanent residence sponsorship programs outside of the international office, it should evaluate whether it makes sense to keep the J-1 Exchange Visitor program within the international office.

Regardless of which offices on campus are responsible for the work, it is important to review the following points:

**Office charged with program oversight.** Your sponsorship policy should make clear to campus constituents which office is charged with program oversight. It may or may not be the same office that performs the day-to-day program work. In collaboration with the office performing the day-to-day work, this office will generally: ensure the policy is implemented and followed appropriately; ensure the policy is reviewed and updated as necessary; and oversee new or revised practices implemented in response to changes in federal immigration law, policy, or agency interpretations or practice.

This office should have a clear understanding of the sponsorship policy and the reasons why your institution chooses to sponsor certain positions and not others. This office should also have a good understanding of the various sponsorship categories at play, since it,
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along with the office of legal counsel and the office performing the day-to-day work, will periodically formulate university practices and positions in response to changes in federal immigration law, policy, or agency interpretations or practice.

**Office charged with performing day-to-day program work.** Generally, this office will: a) work closely with the office charged with program oversight to ensure policy is implemented, reviewed and updated, as necessary; b) perform casework on a daily basis, pursuant to your institution’s sponsorship policy guidelines; and c) serve as main campus liaison to outside immigration attorney(s) performing any casework.

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**Special Considerations for the Office Performing Day-to-Day Work**

- **Collaboration with legal counsel office and office with program oversight.** This office should check-in regularly with the Office of Legal Counsel and the office overseeing the program to ensure that the program being implemented is in alignment with your institution’s risk-tolerance level. This office should also work with legal counsel, and at times, the office with program oversight, to evaluate and determine your institution’s position with respect to changes in the law, federal agency practices, legal interpretations, and so on.

- **Expertise required by the adviser.** A qualified immigration adviser must possess a solid understanding of basic immigration law and concepts. The adviser must understand the details of the nonimmigrant and permanent residence case types that the university handles, which, depending upon the case type, can include retaining substantial documentation pursuant to federal regulations. In addition to legal knowledge, the qualified adviser should have strong organizational skills to effectively manage the details of various important data points and critical dates pertaining to immigration case filings.

- **Role of the adviser.** It is good practice for the office performing the work to determine the role of the adviser, including how much independent decision-making the adviser should exercise with regard to case issues, and the type of issues the adviser should not handle. All parties should understand that since the adviser is employed by your institution, his/her duties are to meet the needs of your institution, which may not always be in alignment with the needs of a particular department, principal investigator, or foreign national. Additionally, both university personnel and the international employee might ask the adviser legal questions that are outside the scope of his/her work, and answering them may be considered practicing law without a license. The adviser must rely upon your institution’s legal counsel office, or outside immigration counsel, if applicable, to answer certain questions and handle certain case issues.

- **Cross-training.** It is a best practice to cross-train advisers, so that more than one person can readily take on any kind of casework in the office, including the permanent residence work. Cross-training employment-based immigration advisers at institutions across the country may be somewhat lacking, at least as compared to cross-training F-1 international student advisers. This may be due to lack of volume of employment-based immigration work, or it may be that some of the work is so specialized and different from other regulatory work, fewer people have received appropriate training to perform it. While cross-training staff can be daunting, there are very compelling reasons for you to do so. For example, staff turnover happens, and immigration casework is very time-sensitive, with many details that must be monitored and handled in a timely fashion. Given the complexity of the work, it is not reasonable to assume someone in the office who does not normally handle this work can easily pick it up in a very short amount of time. If cross training is not a viable option, then your institution should have a plan in place to manage the work in light of turnover, such as Designating outside immigration counsel to step in when necessary.
or it may otherwise evaluate immigration law firms to request for proposal to retain one or more law firms to represent it. Your institution may issue a follow your institution's rules on how to retain outside counsel; rather, they must these cases, hiring units and foreign nationals cannot understand the process and any limitations.

Disadvantages to outsourcing include having less control over and knowledge about the casework than if it were handled in-house. Additionally, even when outside counsel handles some or all of the employment-based immigration casework, your institution will still need to assign adequate staff in-house to handle many program responsibilities. For example, you will still need staff to provide hiring units and foreign nationals with information and to answer questions about your institution’s hiring practices and sponsorship program. Your institution will also need to designate staff to review and gather complete documentation for outside counsel, to review the work of outside counsel, and to sign relevant government forms on behalf of your institution. At times, designated staff may also need to liaison between outside counsel, the foreign national, and the hiring unit.

If your institution is interested in outsourcing it should consider the following points:

Check with the legal counsel office to understand when and how outside counsel can represent your institution. Since your institution is the petitioner in these cases, hiring units and foreign nationals cannot retain any counsel of their choice; rather, they must follow your institution’s rules on how to retain outside counsel to represent it. Your institution may issue a request for proposal to retain one or more law firms to handle all of its outsourced immigration matters, or it may otherwise evaluate immigration law firms to create a “list” of law firms that are allowed to represent it in immigration matters. Some institutions might allow retention of any attorney, with prior approval. If your institution will outsource immigration casework, you should make clear in the written policy what case types are outsourced, the process of retaining outside counsel, and the office on campus that will liaison with outside counsel. In this way, all campus constituents, especially the hiring units and the foreign nationals, understand the process and any limitations.

Determine which university office will liaison with outside counsel, and determine its charge. This will usually be the office that handles any immigration work in-house, but it may be another office, such as your institution’s legal counsel. Even though outside counsel will work with various hiring units on campus, your institution should designate one primary point of contact on campus to sign and review forms before they are filed, to answer questions about university policies and procedures, and so on. Since this office will review casework and sign documents for the employer, it should have some understanding of the immigration casework performed.

Define outside counsel’s scope of work. Your institution should clearly define the case types that outside counsel will handle. It may choose to outsource all of its employment-based casework, or only a portion—for example, only the permanent residence work, or the permanence work and any new H-1B petition filings. Additionally, your institution should clearly define the scope of representation that counsel will provide. For example, whether outside counsel will handle all matters related to a particular case type or just certain matters (i.e., whether representation will include simply preparing and filing the H-1B petition itself, or if it will also include all employee travel and visa stamping questions/requests, as well as questions and requests with respect to the H-1B worker’s dependent family members).

Ensure periodic evaluation of outside counsel’s work. Your institution should periodically evaluate the work of outside counsel to provide counsel with feedback for improvement, or to potentially end the relationship with current counsel and locate new counsel that better meets your institution’s needs. Hiring units and foreign nationals who work directly with outside counsel can provide valuable feedback.

Tips on choosing qualified immigration counsel. Most qualified immigration attorneys solely practice
immigration law, and most will focus on a particular area of immigration law, such as—in this case—employment-based immigration. Immigration attorneys often even specialize within an area of employment-based immigration law; for example, some have a large “EB-1” or employment-based first category caseload, and others have a large labor certification caseload. Your institution should consider specializations that align with the types of cases it wishes to outsource. While some immigration attorneys practice at large firms with other practice areas, many immigration attorneys practice at smaller “boutique” firms, where most all of the attorneys specialize in some area of immigration law. Additionally, many immigration attorneys are sole practitioners. Immigration law is administrative, and so an immigration attorney need not reside or be licensed in a particular state to handle most employment-based immigration matters for a client in that state. Thus, pursuant to federal law, your institution can retain counsel in most any state to handle most of its immigration matters.

Questions To Ask When Interviewing Prospective Outside Counsel

- What is your area of immigration expertise and case approval and denial rates?
- What is your experience working with large institutional clients? (In particular, institutions of higher education?)
- How will you handle the work timely and without interruption in services if you are a sole practitioner, or in an office with one or two other attorneys?
- How does your fee structure work, and do you charge a flat-rate fee for service or by the hour? Any charges for phone calls, e-mails, and short consultations?
- What is your fee for particular case types? Will you negotiate a lower rate for case preparation, depending upon the volume of cases prepared for our institution?
- What is your expected turnaround time on client communications and on-case preparation?
- How will you handle potential conflicts of interest that may arise between our institution and the foreign national employee, since you would work closely with both when completing immigration casework?
- What expectations do you have of our institution and for the foreign national employee throughout the case preparation process?

Knowing When to Re-Evaluate Current Sponsorship Program

Your institution should review and re-evaluate its immigration sponsorship policy when changes occur, either internally or externally, that call into question the efficacy of the current program. Additionally, if hiring units and foreign nationals consistently request exceptions to the policy to best meet their hiring and immigration needs, your institution may wish to re-evaluate current policy. Finally, your institution should commit to a periodic review of its sponsorship policy to best ensure the policy continues to meet your institution’s needs.

External Changes. Changes in immigration law, policy, agency practice or the general immigration landscape may impact your sponsorship program. For example, new federal procedures or requirements may require significantly more institutional resources to successfully prepare and file a case. In response, your institution may need to hire additional staff, scale back on which positions to sponsor, or outsource some work to outside counsel. Significant backlogs and waiting periods to obtain permanent residency in immigrant visa categories that were once current may bring your institution to consider sponsoring qualified foreign nationals in other immigrant visa categories that are not backlogged or delayed. The government’s interpretation of what constitutes a “permanent” position in the context of an outstanding professor or researcher petition, or the government’s implementation of a stricter employment-based first category case adjudication process, may lead your institution to re-evaluate what positions and persons it will sponsor under the employment-based first category.

Internal Changes. Changes in your institution’s hiring practices, or new hiring initiatives, may also impact the breadth of its immigration sponsorship program. Additionally, budget cuts, university reorganization, and loss of expertise may require your institution to cut down on casework it takes on, or to outsource more casework to outside counsel.
# Sample Policies

Following are several institutions across the country with different immigration sponsorship program models:

## Georgia College
- **Office charged with program duties:** The International Education Center is charged with all duties relating to the J-1 exchange visitor program. The duties include document review and provide the DS-2019 and letter of invitation to be taken to a U.S. Embassy or Consulate to apply for the J-1 visa, as well as immigration reporting as required by federal law. For more information regarding the J-1 Exchange Visitor program, please visit: [http://www.gcsu.edu/visasandresidencies/j1exchange.htm](http://www.gcsu.edu/visasandresidencies/j1exchange.htm).
- **For all other visa and residence questions for employing foreign nationals, stakeholders must see the Office of Legal Affairs.**
- **Use of outside counsel:** The Office of Legal Affairs is first point contact with all foreign nationals. An onsite Immigration Specialist handles services and support for employment-related immigration matters—this includes the intake process for all petition filings. The H-1B and permanent residence petitions are filed by an outside immigration attorney, approved by Georgia’s Attorney General’s office, to assist the University System of Georgia on all immigration matters.
- **The Immigration Specialist serves as a liaison between the university-employed foreign nationals and the outside immigration attorney.** [http://www.gcsu.edu/visasandresidencies/h1boverview.htm](http://www.gcsu.edu/visasandresidencies/h1boverview.htm) or [http://www.gcsu.edu/visasandresidencies/permanentresidencyoverview.htm](http://www.gcsu.edu/visasandresidencies/permanentresidencyoverview.htm).

## Northwestern University
- **Office charged with program duties:** Scholar Services, within the International Office.
- **Case types handled within this office:** J-1, H-1B, E-3, TN and Permanent Residence cases.
- **Use of outside counsel:** Scholar Services handles J-1, H-1B, E-3 and TN work in-house. Permanent residence cases handled by outside counsel. For the labor certification process, the department and beneficiary must select an attorney from a list of university approved attorneys; the International Office coordinates the preparation, filing, and obtaining the labor certification; attorney prepares the I-140 for the International Office to review and sign; attorney files I-140; and attorney prepares and files the I-485. If a case is approved for outstanding professor or researcher sponsorship, then the beneficiary must select an attorney from the list of approved attorneys. The International Office coordinates with the attorney to prepare and file the petition.

## The Ohio State University
- **Office charged with program duties:** For J-1, H-1B and TN work, the International Students and Scholars area within the Office of International Affairs; for permanent residence work, the Office of Legal Affairs.
- **Use of outside counsel:** J-1, H-1B and TN work handled in-house; permanent residence work is either handled by the Office of Legal Affairs, or by outside counsel appointed by the Attorney General of Ohio, pursuant to a request from the Office of Legal Affairs.
Sample Policies (continued)

**Rice University**
- Office charged with program duties: Office of International Students and Scholars.
- Case types handled within this office: J-1, TN, H-1B, Permanent Residence, in addition to student visa work.
- Use of outside counsel: For H-1B and permanent residence cases, the university must approve a law firm to process and file the case. Rice has a pre-approved list of law firms, but states that should the candidate “choose to use another law firm, prior review and approval from Rice’s Office of the General Counsel must be given first.”

**University of Florida**
- Office charged with program duties: Immigration Compliance Services, within the Office of Human Resource Services.
- Cases handled: H-1B, TN, O-1, E-3 and Permanent Residence cases. Use of outside counsel: All applications and petitions are prepared in conjunction with an immigration law firm.
- The J-1 exchange visitor program is housed within the University of Florida International Center, Exchange Visitor Services. [http://www.ufic.ufl.edu/EVS/index.html](http://www.ufic.ufl.edu/EVS/index.html).

**University of California at Los Angeles**
- Office charged with program duties: Dashew Center for International Students and Scholars.
- Case types handled within this office: J-1, H-1B, TN, E-3, O-1, and Permanent Residence, in addition to student visa work.
- Use of outside counsel: Policy requires outside attorney to handle permanent residence cases, new H-1B filings, new E-3 filings and O-1 filings, in close cooperation with the Dashew Center. The Dashew Center generally handles J-1 and TN cases, H-1B extensions, and E-3 extensions, with certain exceptions.
- For permanent residence sponsorship guidelines, see [http://www.internationalcenter.ucla.edu/home/EmploymentBased/81/86/PR](http://www.internationalcenter.ucla.edu/home/EmploymentBased/81/86/PR). The website states that “[t]he Dashew Center will provide counseling in determining strategy for a case and selecting an attorney; review documents prepared by the attorney; ensure compliance with UCLA’s policy, procedure, and format; obtain university signatures; and provide status reports.”

**University of Virginia**
- Case types handled within the Office of Human Resources Compliance and Immigration Services: TN, H-1B, O-1, E-3, and Permanent Residence work.

**University of Washington**
- Office charged with program duties: International Scholars Operations, a division of Academic Human Resources, housed in the area of the Vice Provost for Academic Personnel.
- Case types handled within this office: J-1, H-1B, E-3, TN, O-1, and Permanent Residence cases.
- Use of outside counsel: Applications and petitions prepared in-house.
COMMONLY USED EMPLOYMENT-BASED IMMIGRATION CATEGORIES

Nonimmigrant Categories

Visa categories such as F-1 Optional Practical Training, J-1, H-1B, TN, E-3, and O-1 are temporary in nature and do not lead to permanent residence. An employer must petition for sponsorship in all of these categories, except for the F-1 category and sometimes the J-1 category, so your institution would be very involved in the preparation and filing of these cases.

1. **F-1 Optional Practical Training:** “An F-1 student is a nonimmigrant who is pursuing a ‘full course of study’ to achieve a specific educational or professional objective, at an academic institution in the United States...Once the educational or professional objectives have been attained, the F-1 student is expected by the U.S. government to return to his or her residence abroad.” Further, “F-1 students studying at colleges, universities, conservatories, or seminaries level may qualify for practical training, which allows them to engage in temporary employment to gain practical experience in his or her field of study.”

Many F-1 students use the Optional Practical Training (OPT) benefit to work in the United States after completion of their course of study. The OPT employment must be directly related to the student’s course of study, but is not tied to any particular employer, and does not require an employer sponsor. Thus, the employer typically is very minimally involved with this process, if at all. Applicable government filing fees are relatively minimal, and are usually paid by the student. Standard OPT is available for a maximum of 12 months, and a one-time 17-month extension (for a total of 29 months of OPT work authorization) is available to certain STEM (Science, Technology, Engineering, and Mathematics) degree recipients. See the NAFSA Adviser’s Manual, Chapter 3K, for more details on Optional Practical Training.

While your institution may eventually sponsor an employee with H-1B status, in most cases, it makes sense for the graduating F-1 student to first obtain OPT work authorization. Once the person begins working on OPT, you can file a petition to change the person’s status to H-1B, either before the OPT expires, or when it expires. If the position is temporary (for example, a postdoctoral research associate position) and is likely to end before the OPT work authorization expires, your institution may decide not to pursue H-1B sponsorship at all. Keep in mind that the F-1 status does not allow for immigrant intent, or the intent to remain permanently in the United States. Spouses in F-2 dependent status do not qualify for work authorization.

2. **J-1 Exchange Visitors:** “The Exchange Visitor Program promotes mutual understanding between the people of the United States and the people of other countries by educational and cultural exchanges, under the provision of U.S. law...The first step for a prospective nonimmigrant exchange visitor is to be accepted in an established exchange visitor program that is Student and Exchange Visitor Program (SEVP) certified...At the conclusion of their program, Exchange Visitor program participants are expected to return to their home countries to utilize the experience and skills they have acquired while in the United States.”

The Department of State and the SEVP monitor J-1 exchange programs, and the Student and Exchange Visitor Information System (SEVIS) is used to maintain information on J nonimmigrants. The J-1 exchange visitor must have a SEVIS-generated document, DS-2019, issued by the designated sponsor. The regulations require all exchange visitors to have sickness and accident insurance and medical evaluation and repatriation insurance in effect for the duration of their exchange visitor program. The program sponsor is required to monitor the insurance compliance. See the NAFSA Adviser’s Manual, Chapter 4.68.51, Advising exchange visitors of the insurance requirements, and Chapter 4.12.3, Insurance requirements, for more detailed information. Additionally, J-1 Exchange Visitors must possess sufficient English language proficiency to participate in the J-1 program and must demonstrate sufficient funds to support themselves, and any dependents, for their program duration. See the NAFSA Adviser’s Manual, Chapter 4, J-1 Exchange Visitors, for more detailed information on this visa category.

There are twenty categories within the EV Program, eleven of which are commonly used by institutions of higher education. The J-1 Exchange Visitors addressed here are those who are hosted by, or at,
Most institutions house their J-1 Exchange Visitor Program and the activities that the Exchange Visitor will engage in must be consistent with the particular J-1 category. Spouses and children in dependent J-2 status may apply for a temporary Employment Authorization Document (EAD) to work for any employer.

Unlike other visa categories discussed in this publication, the J-1 category is not an employment visa category. Rather, while the J-1 category allows employment in certain circumstances, its purpose is to promote international exchange. “An exchange visitor may receive compensation from the sponsor or the sponsor’s appropriate designee for employment when such activities are part of the exchange visitor’s program…. The RO grants work authorization. Such a grant authorizes the employment by making it part of the program” (NAFSA Adviser’s Manual, Chapter 4.74.1). In establishing J-1 Exchange Visitor program policies, institutions should be mindful of the key “educational and cultural exchange” objectives in the federal regulations establishing the J-1 Exchange Visitor visa category. While the program allows for employment in some circumstances, the J-1 category should not be seen as a less arduous alternative to the H-1B Specialty Occupation work visa category.

Most institutions house their J-1 Exchange Visitor Programs in the same office that handles employment-based nonimmigrant and permanent residence work. However, perhaps because of the fundamental differences between the J-1 Exchange Visitor Program and the employment-based work visa categories, some institutions handle the J-1 work within their international office, where they house the international student visa work, and house the employment-based visa work elsewhere. See sample school policies herein, Section 7 above.

3. **H-1B Specialty Occupation Workers**: The H-1B nonimmigrant visa category is available for persons working in a “specialty occupation” requiring “(A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.”

Employers across the country, including institutions of higher education, most frequently employ professional workers temporarily using the H-1B visa category. Importantly, the H-1B category allows for dual intent, so a person in H-1B nonimmigrant status can simultaneously apply for permanent residence, assuming he/she has a manner to do so. A person can generally remain in H-1B status in the United States for a cumulative six years, although if the person is processing toward permanent residence and certain conditions are met, he/she may qualify for H-1B extensions beyond the six years. Dependent spouses and children in H-4 status are not eligible to work in the United States. See the NAFSA Adviser’s Manual, Chapter 7, for more details on the H-1B nonimmigrant category.

Preparing and filing an H-1B petition can be complex. For example, difficult issues routinely occur with: filing change of employer and portability cases; filing H-1B extensions beyond the sixth year for persons processing toward permanent residence; determining whether the position is in fact a specialty occupation and whether the potential H-1B employee meets the “highly specialized knowledge” requirement; understanding the prevailing wage requirement and how to accurately make a prevailing wage request or determination; and in advising on international travel as it relates to filing H-1B change of status and employer portability cases.

An H-1B case includes significant federal compliance requirements, such as the prevailing wage requirement, the deemed export attestation, the posted notice requirement, the Labor Condition Application filing and certification from DOL, as well as significant document retention requirements, including the Public Access File.

4. **TN Professional Workers under NAFTA**: “The TN (Trade NAFTA) category was developed as part of the North American Free Trade Agreement to facilitate the entry of Canadian and Mexican citizens to the United States to engage in professional business activities on a temporary basis...Only occupations specified in Appendix 1603.D.1 of the NAFTA treaty can serve as the basis for TN employment. Appendix 1603.D.1 also stipulates the minimum qualifications for entry into the United States in each occupation.”

Many, but most likely not all, of your institution’s positions in its sponsorship program will be on the
TN list of professional occupations. The TN case preparation is much less labor-intensive, and less costly than the H-1B process. Importantly, only Canadian and Mexican citizens qualify for TN sponsorship. A person can be admitted for up to three years in TN status, which can be renewed indefinitely, although the TN worker must be able to prove that the TN entry is temporary, so the concept of “dual intent” does not apply to this nonimmigrant category. Dependent spouses and children in TD (Trade dependent) status are not eligible to work in the United States.

5. **E-3 Australian Specialty Occupation Workers:** Per NAFSA Adviser’s Manual Chapter 14.4, “[t]he E-3 visa classification allows a maximum of 10,500 Australian nationals per fiscal year to come to the [United States] to perform services in a specialty occupation under the Australia-United States Free Trade Agreement (AUSFTA)...” An E-3 worker can be admitted initially for a maximum of two years, and may be granted extensions indefinitely, for up to two years each. An E-3 “shall maintain an intention to depart the United States upon expiration or termination of E status. An application for initial admission, change of status, or extension of stay in E-3 classification, however, may not be denied solely on the basis of an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.”

This nonimmigrant category is quite similar to the H-1B in nature, and requires a prevailing wage determination, although it is less labor intensive and less costly. Only Australian citizens qualify for E-3 employee sponsorship. Unlike the H-1B classification, the E-3 classification allows spouses to apply for temporary work authorization in the United States.

6. **O-1 Workers of Extraordinary Ability:** “The O non-immigrant category is for the employment of individual aliens who have achieved and sustained national or international acclaim for extraordinary ability in the sciences, arts, education, business, or athletics, or aliens who have demonstrated a record of extraordinary achievement in the motion pictures and television industries.”

The petitioner can request the O-1 status for up to three years initially, with one-year extensions allowed thereafter, and no maximum cumulative duration. Your institution must make the deemed export control attestation in each O-1A filing. See NAFSA Adviser’s Manual, Chapter 9A, O-1 Workers of Extraordinary Ability, for more details on this nonimmigrant category.

Because of the subjective nature and high bar required to meet the “sustained national or international acclaim standard,” your institution would most likely only consider O-1 if H-1B sponsorship is not an option. For example, you might consider the O-1 category if the person is subject to the J-1 two-year home residency requirement, if the person does not meet the H-1B specialty occupation requirement but might meet the O-1 standard in an appropriate field, or if the person has used the maximum six years of H-1B time and does not qualify for additional H-1B extensions. The O-1 status allows for immigrant intent, but in a more limited way than the H-1B category. Dependent spouses and children in O-3 status are not eligible to work in the United States.

**EMPLOYMENT-BASED PERMANENT RESIDENCE CATEGORIES**

Labor certification, outstanding professor or researcher, national interest waiver, and extraordinary ability are all categories discussed here. The labor certification and outstanding professor or researcher categories require an employer sponsor, and are the two most common ways your institution can sponsor employees with permanent residence. Either your institution or the foreign national may act as petitioner under the national interest waiver and extraordinary ability categories. While institutions do not often use the national interest waiver and extraordinary ability categories to sponsor employees with permanent residence, university employees often self-petition under these categories, especially the national interest waiver category.

Generally, your institution would first sponsor a foreign national with temporary nonimmigrant status, and would commence the permanent residence sponsorship process after the person begins working. Your institution would generally continue to extend the foreign national’s nonimmigrant status until he/she obtains permanent residence.

The labor certification and outstanding professor or researcher categories require a permanent job offer. Your institution should carefully review the USCIS definition and interpretation of a permanent position, as
In a basic labor certification case, after conducting the DOL-prescribed recruitment campaign, your institution can proceed with filing the labor certification if the recruitment results in no able, willing, and qualified U.S. workers for the position. Since the recruitment criteria DOL requires in the basic labor certification process is different from any of your institution’s normal hiring and recruitment practices, in almost every case, you must conduct the labor certification related recruitment after the foreign national has been hired and is working in a temporary nonimmigrant status. See 20 C.F.R. § 656.17 for details on the basic labor certification recruitment and documentation process.

To sponsor a foreign national with a special handling labor certification, the position at hand must require some college or university classroom teaching duties. In these cases, your institution also must conduct recruitment in accordance with DOL criteria, however, the DOL-prescribed recruitment is less burdensome and more “real world” than that required under the basic labor certification process. In fact, if your institution puts a sound process in place, mindful of special handling requirements, the initial, actual recruitment can meet DOL-prescribed special handling requirements. In this way, you would not have to partake in a re-recruitment or re-selection process before proceeding with sponsorship. Unlike basic labor certification cases, in cases involving college or university classroom teaching, the recruitment results must only show that the foreign national selected is more qualified than any able and willing U.S. workers who applied for the job for your institution to proceed with sponsorship.

Special handling cases may not require re-recruitment or re-selection, but if your initial search did not meet DOL’s prescribed recruitment requirements, or the case was not timely filed and so the search has become stale, you may conduct a special handling re-selection process for an employee who is already working at your institution in a temporary nonimmigrant status. See 20 C.F.R. § 656.18 for details on the special handling recruitment and documentation requirements.

The labor certification process requires significant collaboration with your institution’s human resource office handling searches. Since all labor certification filings require a DOL-prescribed recruitment campaign, the office handling these cases must work closely with the human resource staff to ensure that your institution’s searches meet DOL-prescribed labor certification requirements. The office handling special handling cases...
would ideally establish a process with human resource staff so that initial searches for positions that qualify for labor certification sponsorship comply with DOL requirements. Alternatively, for either basic recruitment or special handling cases where your institution must partake in the re-selection process, the office handling these cases must work closely with human resource search staff, to ensure these searches appropriately comply with the re-selection and re-recruitment requirements.

Internally, even though many institutions can successfully handle special handling labor certifications and, less frequently, basic labor certifications, many outsource this work due to its complexity. While institutions may be comfortable doing special handling cases in-house using an original search, they may outsource any special handling case that require a re-recruitment/re-selection process, as well as all basic labor certification cases—if they use the basic labor certification process at all.

2. **Outstanding Professor or Researcher Petitions:** The outstanding professor or researcher category “requires the petitioner to establish the following, by a preponderance of the evidence submitted: 1) The beneficiary is recognized internationally as outstanding in a specific academic field; 2) The beneficiary has at least three years of experience in teaching or research in the academic field; and 3) The beneficiary has a job offer from the petitioning employer for: a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic field; a comparable permanent position with a university or institution of higher education to conduct research in the academic field; or a comparable permanent position to conduct research in the academic field with a department, division, or institute of a private employer, if the department, division, or institution employs at least three persons full-time in research activities and has achieved documented accomplishments in an academic field. ...The most common evidentiary challenge in an [outstanding professor or researcher] petition is establishing that the beneficiary is ‘internationally recognized’ as being ‘outstanding’ in an academic field.”\(^\text{19}\) See the NAFSA Adviser’s Manual, Chapter 13.5 for more detailed information on the “EB-1B” outstanding professor or researcher category.

This case type involves a two-step process: 1) employer files the immigrant visa petition and supporting documentation with USCIS; and 2) the foreign national files the adjustment of status application to become a permanent resident with USCIS.

Your institution may generally prefer not to use this category, due to the subjective nature of these case adjudications, where you may file one very strong case and one mediocre case on the same day, and the USCIS may deny or issue a request for evidence in the strong case and approve the mediocre case. Additionally, it takes significant time and effort to prepare the necessary documents to demonstrate the international acclaim or recognition standard. If labor certification is the most complex case type that your institution handles, then outstanding professor/researcher is the most time-consuming and subjective case type.

In the following circumstances, your institution might choose to use this category:

- for certain research positions that do not include classroom teaching duties, where the researcher appears to meet the international acclaim standard and you can avoid the arduous basic labor certification process;

- for tenure-track positions with classroom teaching duties, where the faculty member appears to meet the international acclaim standard, and where the initial recruitment did not meet special handling labor certification requirements, or the labor certification case was not timely filed; thus, you can avoid going through the special handling reselection process; and

- for tenure-track positions with classroom teaching duties, where the faculty member appears to meet the international acclaim standard, but their second-preference labor certification immigrant visa category is backlogged or retrogressed (which commonly occurs for persons born in China and India).

3. **National Interest Waiver Petitions:** The regulation states that the job offer/labor certification requirement can be waived “for aliens of exceptional ability in the sciences, arts, or business if exemption would be in the national interest.”\(^\text{20}\) The current standard that USCIS applies to these
cases is as follows: “1) The alien must be seeking employment in an area of substantial intrinsic merit; 2) the proposed benefit of the alien’s employment will be national in scope; and 3) the national interest would be adversely affected if a labor certification were required. To show this, the petitioner must prove that the alien’s work presents a national benefit ‘so great as to outweigh the national interest inherent in the labor certification process’ or that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.’”[21] This case type also involves a two-step process: 1) Employer or foreign national files the immigrant visa petition and supporting documentation with USCIS; and 2) the foreign national files the adjustment of status application to become a permanent resident with USCIS.

Institutions typically do not use this category. More commonly, foreign national faculty file self-petitions under this category, which does not require an employer-sponsor or a permanent job offer. The disadvantages are that, similar to the “EB-1” outstanding professor or researcher and extraordinary ability cases, these cases are subjective and the legal standard is difficult to meet. Additionally, these cases are in the employment-based second preference category, which can be significantly backlogged, especially for persons born in China and India.

4. Extraordinary Ability Petitions. This classification is intended for persons who are at the very top of their field. The legal standard is that “(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; (ii) the alien seeks to enter the United States to continue to work in the area of extraordinary ability, and (iii) the alien’s entry into the United States will substantially benefit prospectively the United States.”[22] This category does not require a permanent job offer. See the NAFSA Adviser’s Manual, Chapter 13.4, E11 Aliens of Extraordinary Ability, for more detailed information on this category.

The extraordinary ability case type involves a two-step process: 1) employer or foreign national files the immigrant visa petition and supporting documentation with USCIS; and 2) the foreign national files the adjustment of status application to become a permanent resident with USCIS.

The “sustained national or international acclaim” standard is generally seen as the highest, most difficult standard to meet in an employment-based permanent residence case. Given this standard and the subjective nature of case adjudications, your institution typically would only use this category for very few, select employees, if it chooses to use it at all. For example, your institution may consider this category for a select few employees who are not “researchers,” and so do not meet the requirements for an outstanding professor or researcher petition, but do appear to meet the sustained national or international acclaim standard, for example, in the arts or athletics. Foreign nationals can self-petition under this category without an employer-sponsor. Additionally, this case type falls under the employment-based first category, so it is rarely backlogged. However, the “sustained national or international acclaim” standard is extremely difficult to meet, so many foreign nationals who wish to self-petition may better qualify under the National Interest Waiver category.

5. Adjustment of Status. The adjustment of status (AOS) application is the last step in the permanent residence process. Keep in mind that this application is used for a myriad of immigration case types, not just employment-based. See NAFSA Adviser’s Manual, Chapter 13D, Acquiring Lawful Permanent Residence and Beyond, for more detailed information on the adjustment of status process. A foreign national can only file an AOS, and USICS can only adjudicate an AOS, if the relevant immigrant visa category is current, and not backlogged or retrogressed. Thus, this is the step that can be delayed, based upon numerical limitations and backlogs in particular immigrant visa categories.[23]

The AOS application is generally seen as the personal case of the employee, so most institutions do not assist with these case filings. Rather, the foreign national either prepares and files the application him or herself, or retains his or her own immigration attorney to assist in the process.

Filing the adjustment application allows a foreign national to apply for certain benefits, such as temporary employment authorization, based upon
the pending application, as well as an “advanced parole” document for temporary travel outside of the United States. Using these documents to work or travel may negatively impact the foreign national’s nonimmigrant status, so it is critical that a person receives sound legal advice on the consequences of doing so.

Once the foreign national employee files an AOS application, he or she is considered to be in a period of stay authorized by the U.S. attorney general. However, this is not considered a valid “status,” which is why most institutions will continue to extend a foreign national’s nonimmigrant status until he/she obtains permanent resident status, regardless of the temporary work authorization card that the foreign national may obtain.

**USING THIS RESOURCE**

In today’s world, it is inevitable that institutions of higher education—regardless of type and size—will want the opportunity to hire international employees. Moreover, given continually changing federal immigration practices and policies, as well as changing internal institutional environments, even schools with established sponsorship programs will want to periodically reevaluate them. The hope is that this resource will be a useful tool for you to reference when creating or reevaluating immigration sponsorship policies to best meet your institution’s individual needs.

**KEY TERMS**

**Employment-based immigration sponsorship program:** Employer’s program or practice of sponsoring employees with a temporary nonimmigrant or permanent immigrant visa status, which allows said employees to reside and work for the employer in the United States, either temporarly or permanently.

**Export controls:** According to the Bureau of Industry and Security at the U.S. Department of Commerce, “[a]n export of technology or source code (except encryption source code) is ‘deemed’ to take place when it is released to a foreign national within the United States.” Before filing certain nonimmigrant work visa petitions, employers must make a deemed export attestation regarding the release of controlled technology or technical data to the potential foreign national worker.

**Foreign national:** In this publication, this term refers to persons who are non-U.S. citizens and non-U.S. workers.

**Lawful permanent resident:** Once a foreign national’s adjustment of status application in the United States or immigrant visa application abroad is approved, he or she becomes a lawful permanent resident, sometimes referred to as a “green card” holder. A lawful permanent resident can remain in the United States and work for any employer without sponsorship.

**Immigrant visa categories:** Visa categories that allow a person to apply for permanent residence.

**Nonimmigrant visa categories:** Visa categories that allow a person to remain in the United States on a temporary basis, some of which allow for temporary employment-authorization.

**Prevailing wage:** The United States Department of Labor (DOL) Employment and Training Administration defines the prevailing wage as “the average wage paid to similarly employed workers in a specific occupation in the area of intended employment.” Most immigration processes involving the Department of Labor require the employer to pay the employee the prevailing wage. The H-1B and E-3 nonimmigrant categories require the employer to pay the employee the prevailing wage or the actual wage for the position, whichever is higher. An employer can obtain a prevailing wage by making a determination request with Foreign Labor Certification Data Center’s National Prevailing Wage Center (NPWC). In some cases, the employer can also use the DOL’s Online Wage Library or another appropriate wage survey to obtain a prevailing wage.

**ADDITIONAL RESOURCES**

1. The NAFSA Adviser’s Manual, chapters on all nonimmigrant visa and immigration visa categories.


This document discusses, in detail, policy as it relates to permanent residence sponsorship. It discusses issues to consider when developing policies and practices, common models used, and questions to consider when determining the most appropriate model for a particular institution.
3. NAFSA International Scholar Advising Network. For more information, go to: http://www.nafsa.org/groups/home.aspx?groupid=10

Per the website, “[t]his network supports the efforts of those who work with international faculty and scholars, assisting with immigration regulations, as well as orientation and adjustment concerns.”

4. American Immigration Lawyer’s Association: www.aila.org

ENDNOTES

1. This publication refers to the “hiring” of foreign national workers throughout, since the primary focus is on institutional policies and practices pertaining to sponsoring foreign nationals with work visas, and with employment-based permanent residence, and not with hosting J-1 exchange visitors. Importantly, the J-1 Exchange Visitor nonimmigrant category is not an employment visa category, although in some circumstances, it does allow for employment. In the case of J-1 nonimmigrants, your institution is the host, not the employer. Please see Section 8 herein for more details on the J-1 Exchange Visitor category.

2. Keep in mind that non-U.S. workers may possess independent work authorization that allows them to work for a U.S. employer without employer sponsorship.

3. Under the U.S. immigration system, generally speaking, foreign nationals in temporary, nonimmigrant statuses must show that they continue to maintain a residence abroad, and that they intend to leave the United States after their temporary status ends. However, certain nonimmigrant work visa categories, most notably the H-1B category, allow for “dual intent.” Where the regulations allow for dual intent, a foreign national may intend to remain in the United States temporarily and, at the same time, intend to immigrate permanently to the U.S., so may process toward permanent residence while maintaining the relevant nonimmigrant status without any intent issues.

4. For detailed information on policy as it relates to permanent residence sponsorship, see the NAFSA Practice Resource: “Institutional Policies and Practices Concerning Permanent Residency.”

5. J-1 is not a work visa category. Please see endnote 1 and the J-1 information in Section 8 herein.

6. Note the J-1 exception at endnote 2. The J-1 visa category is for exchange visitors, not employees. See more details on the J-1 Exchange Visitor Category in Section 8.

7. NAFSA Adviser’s Manual, Chapter 3.2, F-1 Students: Basic roles and relationships.

8. NAFSA Adviser’s Manual, Chapter 3K.


10. NAFSA Adviser’s Manual Chapter 7A, H-1B Overview. See also statutes and regulations pertaining to the H-1B classification: INA § 214(g) and (i); and INA § 212(n); 8 C.F.R. § 214.2(h); 20 C.F.R. § 655.700 - .800 et. seq.

11. NAFSA Adviser’s Manual, Chapter 9.10.1. See also the relevant law: INA § 214(e)(2) and 8 C.F.R. § 214.6.


15. See NAFSA Adviser’s Manual Chapter 9.9, Dual intent in the O-1 category, for more details.

16. See NAFSA Adviser’s Manual, Chapter 13.5.6, Offer of employment, in the context of an outstanding professor or researcher petition.

17. NAFSA Adviser’s Manual, Chapter 12.1, PERM and the Labor Certification requirement. See also relevant law: INA § 212(a)(5)(A).

18. This preferential standard applies to all labor certifications for positions that include college or university classroom teaching duties, regardless of whether your institution files under the basic recruitment process, pursuant to 20 C.F.R. § 656.17, or the special handling recruitment process, pursuant to 20 C.F.R. § 656.18.
19. NAFSA Adviser’s Manual, Chapter 13.4.1, Outstanding professors or researchers, Basic E12 eligibility requirements.

20. 8 CFR § 204.5(k)(4)(ii).


22. INA § 203(b)(1)(A).

23. See NAFSA Adviser’s Manual Chapter 13.1 for more detailed information on retrogression and immigrant visa preferences.

