

Immigration Sponsorship Policy

Purpose and Summary

Northern Illinois University (NIU) is an equal opportunity employer. The university strengthens its teaching, research, and service mission by hiring scholars and administrative professionals who are highly qualified for their jobs and who have the potential to make significant contributions to the institution. The university's workforce includes some faculty and staff who are not U.S. citizens, U.S. nationals, lawful permanent residents, asylees, refugees or temporary residents under the 1986 amnesty program. In general, if a person does not fall into one of these categories and/or does not hold some other form of employment authorization, then he or she may need to apply for authorization from U.S. immigration authorities before he or she can be employed by the university.

This policy states the university's legal requirements and self-imposed expectations for providing immigration support to its current and prospective employees who are foreign nationals. The policy serves that function by providing information useful to hiring units, as well as current and prospective employees.

Scope

This policy applies to current and prospective employees (excluding student workers or graduate assistants).

Compliance with this policy is necessary to ensure that:

- NIU remains compliant with Federal regulations;
- Employees (current and prospective) obtain authorization and retain their eligibility to work.

Definitions

Foreign National: any prospective faculty, administrators, researchers, or staff member who is not a United States Citizen, United States National, Lawful Permanent Resident ("green card" holder), Asylee, Refugee or Temporary Resident under the 1986 amnesty program at the time of his or her appointment.

Nonimmigrant Visa Status: a temporary immigration status providing permission for a Foreign National to work for the University in a specific position. This Includes H-1B status, TN status, J-1 status, and O-1 status, among others.

H-1B Status: a category of non-immigrant status for individuals who qualify for 'specialty occupation' positions. Typically issued in three-year increments for a total of six years and can be renewed under certain circumstances. The status is dual-intent, it is not permanent in and of itself, but it allows for the foreign national holding the status to pursue permanent resident status.

Permanent Residence or "green card" aka Immigrant Status: the right to live and work in the United States for any employer for no set time limit. Persons may be sponsored to become permanent residents through a close family member, an employer, or in rare cases, by themselves.

Labor Certification: an administrative process required for many employment-based permanent residence categories. For faculty, “Labor Certification” must be sought within 18 months of the faculty member’s appointment decision being made. Some faculty may be exempt from the “Labor Certification” process due to their exceptional scholarly record. For non-teaching positions, the labor certification requires extensive evidence of unsuccessful recruitment for qualified U.S. workers.

Labor Condition – an application filed as part of the H-1B process. Also referred to as the LCA.

Prevailing Wages – the wage (hourly or annual) and usual benefits paid to the majority of workers in a particular category in a defined geographical area at a determined wage level, as determined by the U.S. Department of Labor

Fundamental Research – basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons (National Security Decision Directive 189)

Specialty Occupation – an occupation that requires theoretical and practical application of a body of highly specialized knowledge and 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.

Policy

1) Overview: Employing Foreign National Workers

a) Confirmation of Employment Authorization

Form I-9: All employees hired after November 6, 1986 must complete and sign the United States Citizenship and Immigration Service Form I-9, the Employment Eligibility Verification. Every new employee must complete the top portion of the I-9 form on the first day of the appointment and original documentation received must be received by the hiring unit within three (3) days of the appointment. Form I-9 may be completed prior to the first day of employment only if the employee has received a written offer of employment. The head of the hiring unit or his or her designee shall review and copy the document(s) presented by the employee, record the required information in Section 2 of the form, sign the Form I-9, and ensure delivery to NIU’s Human Resource Services no later than three days after the commencement of employment. A copy of the supporting documentation completed in Section 2 must be attached to the Form I-9.

b) Employment of Foreign National Workers

- i) **Responsible Authority:** Like all workers, Foreign National workers will not be permitted to work at NIU until authorized to do so by federal law. Consequently, it is imperative that the Foreign National worker report to NIU on or before the first day of employment. The determination of whether or not a Foreign National is authorized to begin employment (or will need immigration sponsorship) will be made by the university, through International Student & Scholar Services (hereafter “ISSS”), in consultation with Human Resource Services and the Office of the General Counsel, when necessary.

(1) On behalf of the university, ISSS is authorized to perform all tasks associated with immigration and work authorization sponsorship. Hiring units must work with ISSS on all immigration matters and are not authorized to provide immigration advising. Employees and departments may only use pre-approved outside counsel to apply for employer/university-sponsored immigration status. ISSS will advise when it is necessary to obtain outside counsel.

ii) **Employee Responsibility:** In order to be employed by the university, a Foreign National worker must hold an unexpired Nonimmigrant Visa, an unexpired Employment Authorization Document, or be afforded employment authorization by virtue of some other provision of law such as “cap-gap” authorization for F-1 students with pending H-1B petitions or “H-1B portability” employment authorization afforded to those H-1B workers with a pending change of employer petition. The employee is also expected to maintain eligibility for employment or be subject to termination.

c) University Support for Employment Sponsorship (Both Non-Immigrant & Immigrant) Filings

i) A Foreign National worker, who receives an offer of employment from the university, may need to be sponsored for a Nonimmigrant Visa. In such cases, the University will support the petition of the prospective employee to secure the immigration status that he or she needs to be legally employed by the University.

ii) The university, through designated personnel in ISSS, will prepare and file a Nonimmigrant Visa Petition to obtain appropriate work authorization. It is the responsibility of the foreign worker to cooperate with this process by providing all requested documents within a reasonable time.

iii) As part of this process, the university will request the foreign worker to produce documents to confirm his or her current immigration status and eligibility for the requested visa classification. This will include, but not be limited to, passports, visas, Arrival-Departure Records (Form 1-94), Forms I-20 or DS-2019, notices of approval for other petitions or applications, previous Employment Authorization Document(s), degrees/diplomas, transcripts, in-house request forms, and other documents relevant to the person’s immigration status.

iv) In the event that the foreign worker is not in valid status at the time of filing, or has concealed or misrepresented any aspect of his or her immigration or work history, or is inadmissible or removable under federal immigration law, then the university reserves the right to withhold sponsorship or support for the foreign worker and/or to request the withdrawal of any pending petition or the revocation of any approved petition.

2) H-1B Visa

a) Rules Governing H-1B

i) **Terminology and Restrictions:** H-1B visas are one of the most common Nonimmigrant Visa classifications for university professors, scholars, researchers, and professionals. Foreign workers who are classified as professionals in a specialty occupation, i.e. persons working in positions which require at least a bachelor’s degree or higher in a specialized field, can be eligible for H-1B status. H-1B status is a temporary, non-immigrant classification that is employer-sponsored and employer-specific. The U.S. employer is the petitioner and the

foreign worker is the beneficiary; the U.S. employer “owns” the petition. A person in H-1B status is authorized to work only for the petitioning employer.

- ii) **Term Limits:** In general, foreign workers may be granted up to a total of 6 years of H-1B status, although this period can be extended under limited circumstances. Per federal regulation, all costs associated with the preparation and filing of H-1B status are the responsibility of the employer, in the university’s case it is the responsibility the hiring department. Any costs associated with the filing of non-immigrant work petitions for dependents/family members, i.e. spouse and minor children accompanying the foreign worker, shall be borne by the foreign worker.
- iii) **Travel by H-1B Visa Holder:** If, at any time, a foreign worker covered by an H-1B visa travels outside of the United States, he or she must notify ISSS and obtain the original I-797 Approval Notice prior to departure. Upon return, it is the responsibility of the foreign worker to return the original I-797 Approval Notice to ISSS, along with any updates to their I-94 record.
- iv) **Involuntary Termination of Employment:** Per federal regulation, if an H-1B worker is terminated before the end of his or her period of authorized admission in H-1B status, the University will be liable for the costs of return transportation of the foreign worker to his or her last place of foreign residence. These costs include reasonable costs for a return plane ticket. Other costs, including for example, fees for shipping furniture and household goods are not included. The University places the burden of such costs on the hiring unit.
- v) **Voluntary Termination of Employment:** Per federal regulation, if the H-1B worker voluntarily resigns his or her position before the end of the period of authorized admission in H-1B status, the petitioning employer is not liable for any costs associated with the foreign worker’s departure.
- vi) **Contract ended and not extended:** As long as the contract end date, coincides with the end date of the H-1B validity, the petitioning employer is not required to extend the H-1B work authorization nor for the costs of returning the foreign worker to their home country.
- vii) **Transfer and Portability of H-1B:** H-1B work authorization is portable and may be transferred between employers once granted. The transfer process provides for flexibility in some areas but additional considerations in others. Therefore, if a new hire indicates to the hiring unit that he or she will need to port or transfer his or her H-1B, contact ISSS immediately.

3) Costs

a) H-1B Costs

- i) **Hiring Department Responsibilities:** The Department of Labor considers the costs related to filing an H-1B petition to be a business expense of the employer; therefore, the employer must bear certain costs of filing the petition. In filing an H-1B petition, the employer must attest that it is paying the Required Wage Rate so that the wage offered to the Foreign National cannot fall below Prevailing or Actual wage guidelines. As such, the university will pay the reasonable attorney’s fees as well as filing fees in support of an H-1B visa petition.
- ii) **Required Fees:** The I-129 form to request H-1B status has a standard filing fee and an additional anti-fraud fee. Filing fees are subject to change and the University will pay the appropriate current fee. While the University is responsible for paying certain fees, the

University requires the hiring unit to pay any fee. For the current fees please contact ISSS. Standard filings fees do not include any additional premium processing fees for expedited adjudication. The I-907 form requesting premium processing is optional and carries a standard fee.

iii) Exception for Premium Processing Fee: In the event premium processing is necessary for personal reasons, the Foreign National worker may submit to United States Citizenship and Immigration Services a personal request for premium processing. The beneficiary must include a personal statement describing the personal reason expedited adjudication is needed. The I-907 form requesting premium processing must be signed and filed by ISSS, so the beneficiary should submit all necessary documentation, including the personal request, to the ISSS designated personnel.

b) H-1B Extension Costs

i) An H-1B Extension only requires the base filing fee for the I-129. The anti-fraud fee is not required when an extension petition is made.

c) Costs of Other Non-Immigrant Visas

According to Federal law, the University is responsible for paying fees as required by immigration law, and the University requires the hiring unit to pay any required fees. The filing fees for other non-immigrant categories (F-1 OPT, F-1 STEM OPT, O-1, TN, etc) are not required to be paid by the employer. As such, NIU will not pay the fees associated with other non-immigrant categories. If a hiring department wishes to pay these fees, it may do so.

4) Extensions and Renewals of Nonimmigrant Visa Status

- i) In order to ensure the timely filing of an extension, it is the responsibility of the beneficiary to inform ISSS of the expiration of any university-sponsored immigration status no less than six months prior to the expiration date.
- ii) It is the responsibility of the employee and his or her hiring departments to provide ISSS with all documents that may be required to prepare and file a timely extension of the employee's Nonimmigrant Visa status.

5) I-129 Petition for Non-Immigrant Worker Export Control Certification

a) Regulations: The U.S. Citizenship and Immigration Services (USCIS) Form I-129 (Rev. 11/23/10) – Petition for a Nonimmigrant Worker – requires U.S. employers to certify their compliance with U.S. export licensing regulations when petitioning for H-1B, H1-B1, L-1, and O-1 visa classifications on behalf of employees. ISSS is responsible for the filing of I-129 Petitions for H-1B visas and is involved in the filing of I-129 Petitions for all other categories. Therefore, for all such petitioners, ISSS will confirm the employability of the potential foreign worker based on export controls with the Research Integrity Coordinator in the Division of Research and Innovation Partnerships at NIU.

b) Exports Defined: “Exports” are not only tangible shipments of goods from the United States to another country. The government treats the release of controlled technology and technical data to a foreign worker in the United States as an export to that worker’s country of nationality. The “release” or transfer of technology or technical data to foreign nationals in the United States is “deemed” an export to their country of nationality. This is known as the “deemed export rule.”

- i) Export controls regulate the distribution to foreign nationals, foreign entities and foreign countries of strategically important technology, services and information for reasons of foreign policy and national security. Export control laws apply to all activities, not just sponsored research projects. In the absence of an exclusion, a license must be obtained from the U.S. Department of State or Commerce to disclose controlled technical information to a foreign person in the U.S. or abroad.

c) Fundamental Research Exclusion

- i) Broad exemptions from the export regulations exist. No license is required for fundamental research which is defined as “basic and applied research in science and engineering, the results of which are published or shared broadly within the scientific community.”
- ii) The university research will not be deemed to qualify as fundamental research if:
 - (1) The university accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that the publication will not compromise patent rights of the sponsor; or
 - (2) The research is federally-funded and specific access and dissemination controls regarding the resulting information have been accepted by the university or the researcher.
- iii) Furthermore, no license is required to export or transfer information and research results that are in the public domain, e.g. generally available to the interested public through, among other channels, libraries, bookstores, or newsstands, websites accessible to the public, or trade shows, meetings, and seminars in the United States that are open to the public.
- iv) In addition, no license is required to share technical information with a foreign person who:
 - (1) Is a full-time, bona fide university employee;
 - (2) Has a permanent U.S. address while employed, provided that he or she is:
 - (a) not a national of certain countries and
 - (b) advised in writing not to share export-controlled information with other foreign persons.

6) University-sponsored Applications for Legal Permanent Residence

a) Considerations for Getting Started

- i) Some foreign workers may seek the university’s support for employer-sponsored permanent residence, also referred to as a “green card.” The university may, but is under no legal obligation to, sponsor foreign workers for legal permanent residence in the U.S. Decisions to provide university support for an employer-sponsored permanent residence shall be made by hiring units in consultation with the appropriate division head or dean, as well as with ISSS.
- b) Fundamental Requirements:** Prior to making such a request, heads of hiring units should note that the following criteria must be met for an individual to be sponsored for employment based permanent residency:

- i) Generally, the position must be permanent in nature and must be full time. (Students and visiting scholars, are not eligible for sponsorship. Post-doctoral fellows, temporary, and part-time employees are not normally eligible for sponsorship.)
 - ii) The individual must already be employed in the position. Pending promotions must be finalized before paperwork will be processed.
 - iii) The individual must normally have been employed by the University for the duration of their probationary period. This waiting period is not required by federal immigration laws; it is a University policy. This requirement may be waived for tenure-track positions.
 - iv) At the time of initiating the process for pursuing legal permanent residence , the hiring unit must expect to employ the individual for the duration of the Permanent Residency process. The sponsorship process may take three or more years. In certain situations (particularly for foreign nationals from China and India the permanent residency process can take much longer).
 - v) The approval of the supervisor and Director or Department Chair must be obtained. Although general information regarding green card procedures and categories may be discussed beforehand, University-sponsored permanent residency applications may not be initiated until approval is received from the hiring unit.
 - vi) In making such requests, heads of hiring units must consult with their division head or dean, as well as ISSS; they shall also consider:
 - (1) the program or activity the worker is involved in, length of service and the estimated period of continued service;
 - (2) how the worker is needed as an integral part or as an essential component of the department or activity;
 - (3) what current and future benefit the worker brings to the university;
 - (4) present and future funding source for the worker's position;
 - (5) efforts, if any, that have been made to recruit other qualified workers;
 - (6) the potential impact on current and future retention of international faculty and staff.
- c) Referral to Outside Immigration Counsel**
- i) If the university or hiring unit decides to sponsor a foreign worker for employment based legal permanent residence, then the matter will be referred to a designated and approved outside counsel specializing in U.S. immigration law. Because a petition for employer-sponsored permanent residence is signed by designated personnel in the ISSS and filed in the name of the university, and in order to be assured of the professional competence and integrity of any attorney representing the university, the university will require the foreign worker to use a lawyer or law firm from a prescribed list of lawyers provided by ISSS.
 - ii) If the university decides to sponsor a foreign worker for employment based legal permanent residence, then ISSS, the Office of Human Resources, the hiring unit and other university offices will cooperate by providing the information and documents which are customarily used and required to support employer-sponsored applications for permanent residence.

7) Attorney's Fees and Costs Relating to Immigration-Related Filings

- i) When the university decides to sponsor a foreign worker for employment based legal permanent residence, Federal law requires the University to pay a portion of the costs. The University requires the hiring unit to pay all shared costs. Any costs associated with the filing

of immigration-related applications for dependents/family members, i.e. spouse and minor children accompanying the foreign worker, shall be borne entirely by the foreign worker. The filing of employment based permanent residence applications is a three step process and the costs will be defined by those steps as examined below:

- (a) The Labor Certification and/or the PERM
- (b) The Filing of the Form I-140 – ‘Immigrant Petition for Alien Worker’
- (c) The Filing of the Form I-485 – ‘Application to Register Permanent Residence or Adjust Status’

ii) *Step 1 – The Labor Certification and/or PERM*

- (1) Some applications for legal permanent residence require the filing of an Application for Permanent Labor Certification with the U.S. Department of Labor (“Labor Certification”). As required by federal regulation, all attorney’s fees and other costs directly associated with the filing of a Labor Certification shall be paid by the University directly to outside immigration counsel and the foreign worker shall not be required to pay any part of such fees or costs, either directly or through reimbursement. In consultation with outside counsel, the hiring department, HRS, and ISSS representative will determine whether a Labor Certification or an alternative means is the best method for seeking permanent residence on behalf of the university employee. Other costs directly associated with the filing of a Labor Certification may include advertising fees (online or print) or other costs related to testing the U.S. labor market as part of the Labor Certification Process.
- (2) As required by federal regulation, the attorney’s fees and costs directly associated with the filing of a Labor Certification Application (PERM) as part of the permanent residency process shall also be paid by the university and the foreign worker shall not be required to pay any part of such fees or costs, either directly or through reimbursement.

iii) *Step 2 & 3 – Filing of forms I-140 and I-485*

- (1) Except as otherwise provided herein, the employee is required to pay the legal and filing fees associated with permanent residency filings, including for example, I-140 immigrant petitions and I-485 adjustment of status applications. Any costs associated with the filing of immigration-related applications for dependents/family members, i.e. spouse and minor children accompanying the foreign worker, shall be borne by the foreign worker.

8) Authorized Signatures

- a) Only designated representatives in ISSS have authorization to sign immigrant or nonimmigrant petitions on behalf of the university, in order to ensure the University’s compliance with the law. No other faculty member, department chair or supervisor should sign any immigration-related documentation prepared or presented by any employee.

9) Immigration Sponsorship Does Not Supersede University’s Employment Policy or Practices

- a) This is to confirm that the university’s agreement or willingness to sponsor any foreign worker for a temporary visa classification or for legal permanent residence is not a contract of employment and does not supersede any of the university’s agreements, policies or handbooks relating to employment. Moreover, any statements made by the university or any of its faculty

or administrators in support of any immigration-related application or petition shall not supersede or be included in or be a part of any employment-related evaluation, including evaluations for tenure, promotions, pay increases or new appointments. The University's decision not to sponsor an employee for immigration is not appealable or grievable under any University Bylaw, policy, or procedure.

10) University's Policy May Be Changed at any Time without Prior Notice

- a) This immigration policy shall be in effect until it is changed, modified, revised, amended, or terminated. This immigration policy may be changed, modified, revised, amended, or terminated at any time, with or without prior notice.

11) Questions about the Immigration Policy

- a) Any questions about the University's Immigration Policy may be directed to the designated personnel in ISSS.
- b) Any exceptions to this policy, including, but not limited to payments pursuant to it, must be approved in advance of applying the exception by the designated personnel in ISSS.

12) Effective Date for the Immigration Policy

- a) The Immigration Policy shall be effective as of August 16, 2018