



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 70.09, **Employment-based Nonimmigrant and Permanent Residency Petitions**

- PURPOSE:**
1. Define policies relating to the sponsorship of a foreign national employee for both employment-based nonimmigrant and permanent residency petitions;
 2. Ensure excellence in the quality of services provided to Texas Tech University Health Sciences Center El Paso (TTUHSC EP) and foreign national employees;
 3. Ensure consistency and accuracy in the representations made on behalf of TTUHSC EP to federal agencies;
 4. Ensure compliance with TTUHSC EP's employment policies and practices;
 5. Provide a reliable means of collecting and storing data on TTUHSC EP's foreign national employees, as required by law and for TTUHSC EP's own data collection needs.

REVIEW: This HSCEP OP will be reviewed by March 1 of each even-numbered year (ENY) by the Executive Director for Human Resources or designee, with recommendations for revisions submitted to the Chief Financial Officer (CFOFA) or designee by March 15.

POLICY:

1. Definitions.

- a. **Lawful Permanent Resident.** A foreign national who is lawfully admitted to the U.S. as an immigrant. Other common terms include Permanent Resident and green card holder.
- b. **Foreign National.** A person who was born outside the jurisdiction of the United States, is a citizen of a foreign country and has not become a naturalized U.S. citizen under U.S. law.
- c. **USCIS.** United States Citizenship and Immigration Services.
- d. **OPT.** Optional Practical Training. Work authorization that allows a foreign student to engage in practical training directly related to the student's major area of study.
- e. **STEM Extension:** A 17-month extension of work authorization following the 12-month post-completion OPT for students who "have completed a science, technology, engineering, or mathematics (STEM) degree."
- f. **Employment-based Permanent Residency Petition:** Petitions requiring sponsorship by a U.S. employer based on an offer of full-time, permanent employment.
- g. **Employment-based Permanent Residency Petitions Sponsored by TTUHSC EP**
 - i. EB-1 Outstanding Professor/Researcher
 - ii. EB-2 Professionals holding advanced degrees or applying for a National Interest Waiver to perform work in a medically underserved area
 - iii. Application for Alien Labor Certification (PERM/Special Handling)
 - iv. EB-3 Professionals/Skilled Workers, including Schedule A petitions for Registered Nurses and Physical Therapists
- h. **Nonimmigrant:** One who does not have the intent of remaining permanently in the U.S. and can overcome the statutory presumption that he/she is an immigrant.

- i. **Dual Intent:** Persons who hold both a short-term intent to enter the U.S. in nonimmigrant status and a long-term intent to remain permanently. Presently, only those holding the following status are allowed to enter and remain as nonimmigrants while pursuing permanent residency: H-1B, E, L, O and P.
- j. **Nonimmigrant Petitions Sponsored by TTUHSC EP:**
 - i. H-1B/E-3: allows for temporary employment in a 'specialty occupation'
 - ii. J-1: exchange visitors (see OP 70.28)
 - iii. TN: allows Mexican and Canadian citizens to obtain work authorization in certain designated professional activities as part of the North American Free Trade Agreement (NAFTA), see http://travel.state.gov/visa/temp/types/types_1274.html
 - iv. O-1: reserved for foreign nationals who can demonstrate extraordinary ability in the sciences, arts, business or education by sustained national or international acclaim and are coming to the U.S. to continue work in the area of extraordinary ability.
 - v. B-1: allows visitors to enter the U.S. temporarily for business purposes. Examples include consulting with business associates, traveling for a scientific/educational/professional or business convention/conference, or negotiating a contract.

2. Petition for Nonimmigrant Status.

- a. To ensure compliance, the Visa & Immigration Services Administration has been designated as the only representative to file nonimmigrant petitions on behalf of the institution. Private legal counsel may not file these applications on behalf of the institution.
- b. Sponsorship of a nonimmigrant petition is contingent upon the prospective foreign national employee being able to provide a copy of his/her foreign degree, along with evidence that the foreign degree is equivalent to the U.S. degree (generally established through a credentials evaluation).
- c. TTUHSCPEP directly handles only the following nonimmigrant related forms:
 - i. DS-2019 and waivers
 - ii. I-129 Petition for Alien Worker
 - iii. ETA 9035 Labor Condition Application
 - iv. I-9 (bottom half)
 - v. Any letters on institution letterhead relating to immigration sponsorship
 - vi. I-907 request for premium processing
- d. When entertaining the possibility of hiring a foreign national employee, it is critical that hiring authorities seeking to acquire or extend nonimmigrant status for a current or potential employee consult with Visa & Immigration Services Administration to ensure a visa request is submitted for processing with ample time according to a desired start date of employment.
- e. To be eligible for sponsorship in the H-1B category, the prospective H-1B nonimmigrant employee must have professional skills and a university degree (a minimum of a bachelor's degree or equivalent) in the same or a related field as the job offered.
 - i. Clinical H-1B applications: does not sponsor H-1B visas for the purpose of clinical training (residencies/fellowships). Foreign Medical Graduates (FMG's) coming to TTUHSCPEP to perform services as a member of the medical profession must have, by law, the following: USMLE (parts 1, 2, and 3) or an equivalent recognized test credential examination as determined by the Secretary of Health and Human Services; and competency in oral and written English, as demonstrated by passage of the English language proficiency test given by ECFMG; and a medical license or

other authorization to practice medicine required by the State of Texas.

- ii. Non-clinical H-1B applications: may sponsor H-1B visas for postdoctoral research fellows, faculty members, physicians not coming to perform services as members of the medical profession, and specialized administrative or technical positions.

- f. Foreign nationals who are granted work authorization pursuant to Optional Practical Training (OPT) must utilize all eligible OPT time prior to switching status to H-1B. For an F-1 OPT STEM student to be eligible for the 17 month extension the university as an employer need only be enrolled in E-Verify as a participant. TTUHSC is enrolled in F-Verify under the FAR clause. F-1 student employees do not need to be assigned to a federal contract to be eligible for the 17 month STEM extension. All F-1 Students filing a 17 month STEM extension must contact Visa & Immigration Services Administration. F-1 OPT Foreign nationals must utilize all eligible STEM time prior to switching status.

- g. Porting (beginning employment upon the mere filing of an H-1B petition) to TTUHSC is generally not encouraged without a compelling reason articulated by the departmental hiring authority. Foreign national employees should begin working at TTUHSC only upon approval of the H-1B petition. Under no circumstances will porting be authorized for foreign national employees who are transferring to TTUHSC from a medically underserved area.

- h. J-1 exchange visitors (see HSCEP OP 70.28) will generally be placed into one of the following categories:
 - i. Research Scholar: an individual concerned primarily with conducting research, observing or consulting in connection with a research project who is also allowed to teach or lecture.
 - ii. Professor: an individual concerned primarily with teaching, lecturing, observing or consulting. J-1 professors may also participate in departmental research. However, if conducting research is the primary objective of the sponsorship, then the Research Scholar category should be used for such purpose.
 - iii. Short-term scholar: a professor, research scholar, specialist, or a person with similar education or accomplishments coming to the U.S. on a short-term visit for the purpose of lecturing, observing, consulting, researching, or demonstrating special skills. This category is appropriate for appointments less than six months in length.
 - iv. Postgraduate medical trainees. This exchange visitor category is not sponsored through the TTUHSC J-1 program. All Foreign Medical Graduates are sponsored for residency through the Educational Commission for Foreign Medical Graduates (ECFMG).

3. Petition for Permanent Residency.

- a. To ensure compliance, the Visa & Immigration Services Administration is the only representative to file employment-based permanent residency petitions on behalf of the institution. Private legal counsel may not file these applications on behalf of the institution.

- b. Prior to commencing an employment-based permanent residency petition for a foreign national employee, Visa & Immigration Services Administration will confirm that the foreign national employee holds nonimmigrant status which allows for dual intent. If the foreign national employee's status does not allow for dual intent, Visa & Immigration Services Administration will attempt to switch the foreign national employee to a status which will not be contrary to a permanent residency filing.

- c. TTUHSC EP Visa & Immigration Services Administration office is responsible for directly handling only the permanent residency related forms listed below:

- i. I-140 Immigrant Petition for Alien Worker
- ii. ETA 9089 Application for Alien Labor Certification (PERM)/Special Handling
- iii. Any letters on institution letterhead relating to immigration sponsorship

Any other form not listed above, such as I-539, I-485, I-864, DS-156, N-400, is the sole legal responsibility of the individual signing the form.

- d. Prior to being considered for sponsorship of an employment-based permanent residency petition, the foreign national employee must have successfully completed at least 18 months of service with TTUHSCEP in valid nonimmigrant status, possess the required credentials for the sponsored position, and be eligible to obtain a full and permanent state license (if licensing is required for the profession) at the time the employment-based permanent residency petition is filed. Prior TTUHSCEP service and/or graduate student status does not count towards the 18th month service requirement.
- e. The 18 month service requirement will be waived to accommodate the following situations:
 - i. Foreign nationals who transfer to TTUHSCEP with less than 3 years of remaining H-1B time;
 - ii. Foreign nationals whose children will reach the age of 20 within three years from the date they commence employment with TTUHSCEP. This exception is meant to prevent the dependent child from aging out of the ability to obtain permanent residency along with the primary applicant;
 - iii. Foreign nationals who have typically been offered tenure or tenure-track Teaching Faculty positions within the past 18 months and qualify for Special Handling because they have been recruited to TTUHSCEP via a competitive recruitment process.
- f. Employment-based permanent residency petitions for foreign nationals at TTUHSCEP will generally be limited to specific faculty and research positions with the following job titles: Professor, Associate/Assistant/Clinical Professor, Research Scientist, Senior Research Scientist, Research Associate, or other job title which is permanent in nature. Due to the complexity of the immigration laws, consideration in submitting employment-based permanent residency petitions for positions that do not qualify under the categories listed above will be determined by Visa & Immigration Services Administration on a case-by-case basis by special request.
- g. A foreign national employee may elect to seek permanent residency status on his or her own if the permanent residency petition does not require employer sponsorship, contingent upon the following:
 - i. The foreign national employee notifies Visa & Immigration Services Administration of the intent to pursue such petition; and
 - ii. The foreign national's department does not object to issuing a letter of recommendation, statement, or affidavit concerning performance, capability, or general evaluation of the foreign national, if required for the application; and
 - iii. The foreign national provides a copy of the following documentation to Visa & Immigrations Services Administration at the time of receipt:
 1. Immigrant petition (I-140; I-130) receipt and approval notices
 2. I-485 receipt and approval notices
 3. Current employment authorization document (EAD card)
 4. Advance parole (AP) travel document
 5. Permanent Resident card

Note: All documents provided by the department and recommendation statements MUST

be reviewed by Visa & Immigration Services Administration to ensure compliance.

- h. Neither the sponsorship of an employment-based permanent residency petition nor the pursuit of an outside permanent residency petition negates the foreign national's responsibility to maintain valid underlying nonimmigrant status with TTUHSCEP. The foreign national should continue working at TTUHSCEP pursuant to his or her nonimmigrant status and the concurrence of TTUHSCEP hiring authority, whenever possible, and should not utilize an employment authorization card for purposes of employment at TTUHSCEP, except under the following circumstances:
 - i. The foreign national's underlying nonimmigrant status expires and is not able to be renewed; or
 - ii. The foreign national's prior nonimmigrant status clearly does not allow for dual intent; or
 - iii. The foreign national is unable to enter the U.S. after travel abroad with a visa due to consular backlog or other hardship and is forced to enter on Advance Parole- thereby making it necessary to use his or her work authorization card; or
 - iv. The foreign national is transferring to TTUHSCEP under the I-485 portability provisions of the American Competitiveness in the 21st Century Act (AC21) and has been using an employment authorization card with his/her prior employer without maintaining underlying nonimmigrant status.
- i. Foreign nationals who are transferring to TTUHSCEP under the I-485 portability provisions of AC21 Section 106(c) may do so under the following circumstances:
 - i. The foreign national has an approved I-140 employment-based petition; and
 - ii. The foreign national's I-485 application has been pending for at least 180 days at the USCIS; and
 - iii. The foreign national's proposed position at TTUHSCEP is in the same or similar occupational classification as the position for which the foreign national's prior employment-based petition was filed; and
 - v. The hiring department at TTUHSCEP contacts Visa & Immigration Administration to discuss the particular foreign national's portability prior to the foreign national's transfer to TTUHSC, as well as subsequent to the foreign national's arrival at TTUHSCEP, so that Visa & Immigration Services Administration may file an AC21 letter with USCIS.
- j. Foreign nationals who have an approved I-140 self-petition (non-employment-sponsored) may transfer to continue working in the same or similar field for which the original I-140 self-petition has been approved, regardless of how long the foreign national's I-485 has been pending at the USCIS, as long as the foreign national is in receipt of a valid employment authorization card. If the foreign national has been maintaining underlying nonimmigrant status with his/her prior employer, then a nonimmigrant petition transfer should be filed by TTUHSCEP prior to commencement of the foreign national's employment.

4. Procedures.

For special operational procedures, please refer to TTUHSC EP's Human Resources, Visa & Immigration Services Administration website.

5. Right to Change Policy.

TTUHSCEP reserves the right to interpret, change, modify, amend, or rescind this policy in whole or in part at any time without the consent of employees.