

Section:	VIII.2.9	
Title:	Employment Immigration Sponsorship	
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Approved By:	President	
Responsible Unit:	Office of the General Counsel (609-771-2734, ogc@tcnj.edu)	
Related Documents:	<ul style="list-style-type: none"> • Delegation of Authority and Signature Authority • F-1 OPT STEM Form I-983 	
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<u>Version</u>	<u>Date</u>	<u>Notes</u>
1.0	April 12, 2021	New policy; initial release

I. INTRODUCTION

This policy sets forth the process for The College of New Jersey’s (the “College” or “TCNJ”) employment-based immigration sponsorship and support by the College to its current and prospective faculty who are Foreign Nationals.

This policy is also intended to ensure: compliance with applicable law governing immigration and the employment of Foreign Nationals; consistency and accuracy in the representations made on behalf of the College to federal agencies; adherence to the College’s employment policies and practices and federal regulations; accountability at the highest institutional levels for petitions filed on behalf of the College; and the reliable collection and storing of data on the College’s Foreign National employees, as required by law and for the College’s own data collection needs.

The College’s success in obtaining timely approval of its petitions for work authorization is dependent upon its responsible adherence to law, regulation, and procedures. It is essential, therefore, that individual departments within the College and all those with authority to recruit and hire College employees understand the procedures, time frames, and restrictions involved in the appointment of Foreign Nationals, and plan accordingly.

Due to the variability in needs and eligibility, employment-based immigration sponsorship and/or assistance must be assessed on a case-by-case basis by the Office of the General Counsel (“OGC”) in consultation with Human Resources (“HR”) and the Office of Academic Affairs (“AA”).

International students and scholars who are authorized to study and work pursuant to J-1 or B-1/2 visas are not governed by this policy and should contact the Center for Global Engagement regarding immigration sponsorship policies that apply to them.

II. DEFINITIONS

“Curricular Practical Training” or **“CPT”** is employment that is an integral part of an established curriculum, including: alternate work/study, internship, cooperative education, or any other type of required internship or practicum, which is offered by sponsoring employers (e.g., TCNJ) through cooperative agreements with the school that is granting the degree.

“Employment Authorization Document” or **“EAD”** is a document issued by the United States Citizenship and Immigration Services (USCIS) that provides temporary employment authorization to Foreign Nationals in the United States.

“F-1 Visa” is a type of non-immigrant student visa that allows foreigners to pursue education (academic studies and/or language training programs) in the U.S.

“Foreign National” for the purpose of this policy means any current or prospective employee 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 their appointment.

“H-1B Temporary Worker Visa” status is used for employment in specialty occupations. A specialty occupation is defined as a position that requires at least a Bachelor's degree in a specific field and theoretical and practical application of a body of highly specialized knowledge in order to perform the job duties.

“Labor Condition Application” or **“LCA”** certifies that the employer is offering a prevailing wage. The LCA serves as a notice to U.S. workers, through their bargaining unit, of the employer’s intent to hire a Foreign National.

“Labor Certification” is an administrative process required for many employment-based permanent residence categories. For faculty, “Labor Certification” must generally be sought within 18 months of the date of the faculty member’s original appointment. In limited special circumstances, a faculty member may be exempt from the “Labor Certification” process due to their exceptional scholarly record.

“Nonimmigrant Visa Status” for the purpose of this policy means a temporary immigration status (i.e., H-1B status and TN status) of limited scope and duration that allows a Foreign National to work in the U.S. on behalf of the employer in a specific position.

“Optional Practical Training” or **“OPT”** is a period during which undergraduate and graduate students with F-1 status who have completed or have been pursuing their degrees for more than nine months are permitted by the USCIS to work for one year (extended period for F-1 STEM) on a student visa towards getting practical training to complement their education. OPT can lead to a H-1B visa if the applicant accepts a full-time position after the OPT training period is over.

“Permanent Residency/Permanent Resident”, “Immigrant”, or “Green Card Holder/Green Card” refers to the immigration status (or individual having that

status) that allows a Foreign National to reside and be employed in the U.S. without limitation.

“**TN status**” or “**TN visa**” is a special non-immigrant status in the U.S., Canada, and Mexico that offers expedited work authorization to a citizen of these countries. The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the U.S. to engage in business activities at a professional level.

III. POLICY

A. Authority

The OGC has sole authority to approve and process immigration and work authorization sponsorship applications, certifications and petitions on behalf of the College. OGC works in compliance with United States federal laws, regulations, and procedures governing the employment of Foreign Nationals. No faculty or staff member (other than OGC staff) or attorney who has not been retained by OGC may approve or authorize immigration or work authorization sponsorship, or submit any application or petition to the United States government on behalf of the College, or another TCNJ employee or potential employee. Schools and/or departments requesting the sponsorship of Foreign Nationals must work closely with the OGC and HR.

The Dean of the sponsoring School at TCNJ issues an appointment letter with instructions to contact the OGC if the Foreign National requires immigration or related employment sponsorship. Prior to issuing that letter, the Dean shall ensure that the Foreign National has completed all necessary applicant paperwork in TALEO/applicant tracking system. The OGC will start the petition process upon receiving a copy of the accepted appointment letter to the Foreign National, specifying the terms and conditions of the employment from the sponsoring Dean.

The OGC has the authority to retain outside legal counsel to represent the College and its schools, divisions, and departments. All H-1B immigration petitions in which the College is the petitioner are prepared by outside counsel retained by the OGC to provide employment immigration services.

B. Employment of Foreign National Workers

Like all workers, Foreign National workers will not be permitted to work for the College unless authorized to do so under federal law. The determination of whether a Foreign National is authorized to begin employment (or will need immigration sponsorship) will be made by the College, through HR, in consultation with the OGC. In order to be employed by the College, a Foreign National worker must hold an unexpired Nonimmigrant Visa or an unexpired Employment Authorization Document (EAD), 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.

C. College Support for Faculty Employment Immigration Filing

A Foreign National who receives an offer of employment from the College in the position of a full-time tenure-track faculty member may need to be sponsored for a Nonimmigrant Visa. In such cases, the College will support the petition of the prospective employee to secure the immigration status which the Foreign National needs to be legally employed by the College.

The College's outside counsel prepares and files the College's Nonimmigrant Visa petitions to obtain appropriate work authorization for prospective faculty members. It is the responsibility of the Foreign National to cooperate in providing all requested documents within a reasonable time. As part of this process, the College will request the Foreign National to produce documents to confirm his/her current immigration status and eligibility for the requested visa classification.

In the event that the Foreign National is not in valid status at the time of filing, or has concealed or misrepresented any aspect of the Foreign National's immigration or work history, or is inadmissible or removable under federal immigration law, then the College reserves the right to withhold sponsorship or support for the Foreign National and/or to request the withdrawal of any pending Petition or the revocation of any approved Petition.

D. Nonimmigrant Visa Classifications

a. H-1B Visas

H-1B visas are the most common Nonimmigrant Visa classifications for Foreign National College faculty members. A Foreign National in H-1B status is authorized to work only for the petitioning employer. In general, Foreign Nationals can be granted up to six years (e.g., 2 cycles of 3 years) of H-1B status, although this period can sometimes be extended under certain circumstances. Since H-1B visas allow for dual-intent (no intent required to return home), it is often the prerequisite status prior to applying for permanent resident status.

Any Foreign National covered by an H-1B visa who travels outside of the United States is subject to additional requirements and should check with OGC and with their embassy or consulate prior to travel abroad to ensure that they will not be denied re-entry to the U.S. or otherwise jeopardize their visa status. After re-entering the U.S., they must show their updated I-94 card to HR immediately upon their return to work.

If an H-1B worker is terminated before the end of their period of authorized admission in H-1B status, the petitioning employer (i.e., the College) will be liable for the costs of return transportation of the Foreign National to his or her last place of foreign residence. These costs include reasonable costs for a return plane ticket. Other costs, for example, fees for shipping furniture and household goods, are not included.

The H-1B process should be initiated at least six months prior to the date the employee is expected to begin work in H-1B status. The Foreign National must document approval of H-1B immigration status (in the form of a hard copy of the I-797 Approval Notice from USCIS) submitted to HR before the individual can be placed on the College's payroll and begin work unless the individual possesses another immigration status that allows employment while the H-1B petition is pending.

b. TN Visa

After the OGC receives a signed appointment letter from the Dean of the respective School at TCNJ, the OGC will provide a letter supporting a Foreign National's application for admission in TN status for citizens of Canada or Mexico for roles meeting the requirements for employment in certain professions set forth in NAFTA. Foreign nationals in the TN Visa category may enter the U.S. for periods of up to 12 months and can extend their visa at the discretion of the issuing authority.

c. F-1 Optional Practical Training and STEM Optional Practical Training Extension

Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student's major area of study. Eligible students can apply to receive up to 12 months of OPT employment authorization before completing their academic studies (pre-completion) and/or after completing their academic studies (post-completion). Processing of the OPT application can take from 1 to 6 months. All F-1 students who engage in any OPT program and are employed at the College will need to complete a training plan with their direct supervisor via [Form I-983](#). Forms will be signed by the respective Deans on behalf of the College. Copies of completed forms should be forwarded to the OGC and HR.

If a student holding a F-1 Visa has earned a degree in a certain science, technology, engineering or math (STEM) field, they may apply for a 24-month extension of their post-completion OPT employment authorization. The student must meet the following criteria: hold a STEM degree included on the [STEM Designated Degree Program List \(PDF\)](#), employment by an employer who is enrolled in and is using E-Verify, and an initial grant of post-completion OPT employment authorization based on their STEM degree.

All periods of pre-completion OPT will be deducted from the available period of post-completion OPT. If the OPT is approved, USCIS will issue an EAD. The Foreign National must not begin working before the start date on the EAD. For more information regarding OPT, please see <https://www.uscis.gov/opt>.

d. F-1 Curricular Practical Training

Curricular practical training (CPT) is one type of work permission available for eligible F-1 students. This type of training relates directly to the student's major area of study. The Designated School Official ("DSO") from the degree granting institution (not TCNJ) authorizes the CPT in the Student and Exchange Visitor Information System ("SEVIS"), and the authorization prints on the student's form I-20. Authorization is for one specific employer and for a specific period of time. The student must secure the training opportunity before CPT can be authorized.

E. Extensions and Renewals of Nonimmigrant Visa Status

Some members of the College's faculty in Nonimmigrant Visa status may require extensions of their immigration status. In order to ensure the timely filing of an extension, HR, utilizing eVerify (or other successor system), shall inform the sponsoring School, Academic Affairs and the OGC of the expiration of any College-sponsored immigration status not less than six months prior to the expiration date. The OGC shall separately monitor expiration dates and coordinate with HR. It remains the responsibility of the faculty, Academic Affairs and sponsoring School to provide to the OGC any and all documents, which may be required to prepare and file a timely extension of the person's Nonimmigrant Visa.

The initial term of the H-1B visa of up to three years may be extended for up to another three years with the written approval of the Provost of the College, provided the employee continues to meet all USCIS requirements. The process for the visa extension must be managed through the OGC in conjunction with the College's outside counsel to the extent the College is the petitioner or applicant. Requests for extensions must be initiated with the General Counsel's office at least 6 months before the current visa approval expires.

F. Legal Permanent Residence

The decision to sponsor tenure-track and tenured faculty members for legal permanent residence will be made by the Provost in consultation with HR, the Dean of the School in which the faculty member is working, the OGC and the department chair or supervisor. The Foreign National must have completed at least one academic semester of employment and his/her department chair and Dean must indicate satisfaction with such performance. The College does not sponsor temporary or adjunct faculty for permanent residence.

During the Foreign National's first semester at the College, the OGC shall notify the Foreign National's Dean of the option to request that the College sponsor the Foreign National for legal permanent residence. Any such request shall be made in writing by the Foreign National's department chair or supervisor and submitted to the Dean for the Dean's approval and submission to the OGC. The OGC may provide a template for such requests. Such requests shall be treated as recommendations only and are not binding on the College.

With the exceptions noted below, the Foreign National is responsible for paying the attorney's fees, the costs and the filing fees associated with such an application. It is the responsibility of the faculty member to make timely payment of all attorney's fees, costs and filing fees associated with a College-sponsored application for legal permanent residence. Any costs associated with the filing of immigration-related applications for family members, i.e., spouse and minor children accompanying the Foreign National, shall be borne by the Foreign National.

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 College directly to outside immigration counsel or other provider and the faculty member shall not be required to pay any part of such fees or costs, either directly or through reimbursement. In consultation with counsel, the College will determine whether a Labor Certification or an alternative means is the best method for seeking permanent residence on behalf of the College faculty member.

G. Attorney's Fees and Costs of Immigration-related Filings

H-1B Petitions:

The Department of Labor considers the costs related to filing an H-1B petition to be a business expense of the employer. 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 College will pay the reasonable attorney's fees as well as filing fees (standard filing fees) per employee in support of an H-1B visa petition. The cost of any associated visa applications for family members (H-4 etc.) will be borne by the employee.

If premium processing is required, the College will pay for the reasonable attorney's fees as well as expedited government filing fees. Any costs associated with the filing of immigration-related applications for family members, i.e., spouse and minor children accompanying the Foreign National, shall be borne by the Foreign National.

Permanent Residency Petitions:

As required by federal regulation, the attorney's fees and costs directly associated with the filing of a Labor Certification as part of the permanent residency process shall be paid by the College and the Foreign National shall not be required to pay any part of such fees or costs, either directly or through reimbursement.

If a Foreign National pursues Permanent Residency through a method other than Permanent Labor Certification ("PERM"), such as the Outstanding Researcher or Extraordinary Ability Immigrant Petition, the College will pay the attorney's fees and government filing fees in an amount not to exceed to current attorney's fees and government filing fees required for a PERM application. Any fees in excess of that amount must be paid by the applicant.

Except as otherwise provided herein, the employee is required to pay the legal fees associated with other permanent residency filings, including, for example, I-140 immigrant petitions and I-485 adjustment of status applications.

H. Other Information

The College's agreement or willingness to sponsor any Foreign National for a temporary visa classification or for legal permanent residence is not a contract of employment and does not supersede any of the College's agreements, policies or handbooks relating to employment. Moreover, any statements made by the College 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.

If a College employee's employment is contingent upon their spouse's employment immigration status, it is the responsibility of the College employee to notify HR as soon as possible of their spouse's immigration status change. This change may/could affect their employment status with the College.

Failure to adhere to this policy may jeopardize the immigration status of the individual employee, limit the College's ability to hire and sponsor Foreign Nationals, and subject the College to agency oversight.