

**POLICY TITLE:** Immigration Status Sponsorship and Related Processes;  
Employment-Based, Employer-Sponsored Immigration Petitions  
and Related Applications

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### **I. Overview**

This policy regarding employer-sponsored nonimmigrant and immigrant petitions provides guidelines to the University of Florida sponsoring units.

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### **II. Authority**

#### **A. Authority Provided to the University and Human Resource Services (HRS)/Immigration Compliance Services (ICS)**

##### **1. Nonimmigrant Petitions**

Section 214 of the Immigration Regulations provides that an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an employer, if that employer petitions for that authority. These regulations apply to the nonimmigrant classifications, sponsored by the University, and identified as H-1B, TN-1, TN-2, O-1A, and E-3. The United States employer must file a petition with U.S. Citizenship and Immigration Services for review of the services or training and for determination of the foreign national's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States.

The University hereby assigns responsibility to the Immigration Compliance Services unit in the Office of Human Resources to generate and submit such petitions in the University's behalf as the "United States employer".

## **2. Immigrant Petitions**

Section 204.5(c) of the Immigration Regulations clarify that "Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Immigration and Naturalization Act." For University purposes, these provisions concern the Outstanding Researcher/Professor, Member of the professions holding an advanced degree or an alien of exceptional ability (who is Not seeking a National Interest Waiver), and a Professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree) categories. The University hereby assigns responsibility to the Immigration Compliance Services unit in the Office of Human Resources to generate and submit such petitions in the University's behalf as the "United States employer".

## **III. POLICY**

### **A. Legal Representation and Legal Advice**

University policy does not permit private attorneys to submit immigration related petitions or applications on its behalf. University employees are not authorized to sign the Notice of Appearance as Attorney or Representative (Form G-28), which grants authority to an attorney to act on all aspects of immigration on behalf of the University; accordingly, University employees are prohibited from attempting to grant such permission. All applications and petitions associated with University sponsored nonimmigrant immigration statuses must be submitted by ICS/HRS. The University *will* withdraw any submitted Form G-28 that is inconsistent with this policy.

The University's Office of the Vice President and General Counsel (VPGC) are authorized on behalf of the University to provide or retain all legal services for the University, including for the ICS/HRS. If any legal services are needed by the University in the administration of the nonimmigrant visa program or other immigration matters, ICS/HRS will obtain legal services through the VPGC.

ICS staff and VPGC personnel represent the University and do not provide legal advice to prospective or current foreign national employees or provide referral services.

## **B. Administration and Responsibility**

All immigration applications and petitions associated with University sponsored non-immigrant statuses and immigrant classifications are generated, submitted and solely managed by ICS staff in the Office of Human Resource Services.

The University/ICS cannot guarantee that its petitions filed requesting nonimmigrant status (employment authorization), immigrant classifications, or applications for Adjustment of Status (AOS) filed by the applicable foreign national employee, based on University sponsored immigrant petitions will receive favorable decisions because all such determinations rest with USCIS and are beyond the scope of the University's/ICS' responsibility and authority. Additionally, the University /ICS provides sponsorship services to benefit interests that further the University's mission.

Faculty and staff are prohibited from personally submitting or authorizing the submission of any documents related to University sponsored immigration statuses to a third party. Faculty and staff and third parties are also prohibited from contacting Federal agencies (USCIS, DOL/ETA, DOS, CBP, *etc.*) or government officials regarding any petitions or applications submitted by University authorized staff without *written* permission issued by ICS.

## **C. Liability Associated with Nonconformity to Federal Regulations**

Prospective and current nonimmigrant employees and sponsoring University units are responsible for fully and accurately disclosing all information relevant to the immigration status petitioning process; applicable prospective and current employees and sponsoring units must provide full and accurate disclosure throughout the petitioning processes. ICS has full authority to withdraw any University sponsored petition upon learning such disclosure was not provided.

## **D. Sponsorship Expenses (Processing Fees)**

### **1. Nonimmigrant Statuses**

Processing fees for applicable USCIS petitions and DOL/ETA applications for all corresponding sponsorship processes associated with sponsorship of nonimmigrant statuses are the sole responsibility of the sponsoring University unit, with the exception of fees associated with USCIS Premium Processing Service. Premium Processing Service fees may be provided by the sponsoring University unit or the prospective or current nonimmigrant employee as determined by the University unit.

Any Fees-for-service levied by ICS for all applicable processes associated with sponsorship are the sole responsibility of the sponsoring University unit. Payment/proof of payment of all applicable fees associated with petitions submitted by ICS must be provided to ICS with the official request for initial sponsorship, extension of status, or amendments to the conditions of the current petition on file with USCIS.

## **2. Immigrant Preference Classifications**

Processing fees levied by USCIS for all applicable processes associated with immigrant preference classifications may be provided by the sponsoring University unit or the prospective or current nonimmigrant employee, as determined by the University unit. Processing fees levied by the DOL/ETA for all applicable application processes are the sole responsibility of the sponsoring University unit. Any Fees-for-service levied by ICS for all applicable processes associated with sponsorship are the sole responsibility of the sponsoring University units. Payment/proof of payment of all applicable fees associated with petitions submitted by ICS must be provided to ICS with the official request for sponsorship.

## **E. University Sponsored Nonimmigrant Statuses and Immigrant Preference Classifications**

### **1. Nonimmigrant Statuses**

The University sponsors the following nonimmigrant employment-based statuses: H-1B, TN-1, TN-2, O-1A, and E-3. Sponsorship of these statuses is limited to nonimmigrants who meet Federal and University criteria for sponsorship and who possess an offer of employment for, or in the case of renewals hold, a position that meets applicable Federal regulations.

### **2. Immigrant Preference Classifications**

The University sponsors the following employment-based immigrant preference classifications: Outstanding Researcher/Professor (EB1-2), Professionals with an Advanced Degree and Persons with Exception Ability (EB2-A), and Skilled Workers, Professionals, and other Workers (EB-3); these classifications are authorized by § 203(b)(1)(B), § 203(b)(2)(A), § 203(b)(3), respectively. Initiation and completion of the sponsorship processes associated with these classifications is limited to current nonimmigrant employees who; (1) hold valid H-1B status, (2) meet Federal criteria for sponsorship, and (3) maintain valid employment status with the University in the sponsorship eligible position.

#### **IV. PROCEDURES**

##### **A. Implementation of Procedures**

ICS will issue and administer procedures that are not inconsistent with this policy. Procedural changes made are based on revisions to Federal regulatory procedures and to changing conditions associated with University sponsorship processes. This policy and any such changes are subject to review by University Vice President for Human Resource Services and Vice President and General Counsel, will be posted on the ICS webpage, and implement and constitute University policy.

##### **B. Initial Sponsorship**

Sponsoring University units are required to initiate the sponsorship process by contacting ICS to acquire guidance and necessary permissions. The requirements of Federal immigration law, other applicable federal and state law, and requirements, in addition to University regulations and policies, must be satisfied before permission is granted to undertake the sponsorship processes. A brief non-exhaustive discussion of certain of the requirements follows.

###### **1. Requirements**

###### **a. Nonimmigrant Classifications (H-1B, TN-1, TN-2, O-1 and E-3)**

Specified nonimmigrant statuses are sponsored by the University of Florida to employ foreign national faculty, postdoctoral, resident, OPS

academic and TEAMS positions that meet Federal immigration law, other applicable federal and state law, and University requirements. Sponsorship is available to eligible foreign nationals who receive an offer of employment, or in the case of renewals are, employed by UF, and have the credentials to qualify for the applicable professional positions. Permanent, temporary, full-time and part-time positions that require the incumbent to possess a bachelor's degree or a higher level degree in a corresponding academic field are eligible for sponsorship for nonimmigrant classifications that are determined to be appropriate by ICS.

**b. Immigrant Classifications for Permanent Resident (PR) Status (EB-1(b), EB-2(A), EB-2(B), and EB-3**

Immigrant preference classifications are sponsored by the University, for qualifying foreign national employees who possesses H-1B status and hold a qualifying position. Qualifying foreign nationals are those who meet all Federal immigration law other applicable federal and state law, and University requirements. Qualifying positions are those that meet University, Federal and any other applicable requirements for sponsorship.

All positions that are temporary in nature, such as Post doctoral associates, residents and grant funded-positions and Other Personnel Services (OPS) positions are excluded from sponsorship eligibility. Permanent, full-time positions that require the incumbent to possess a bachelor's degree, or a higher level degree in a corresponding academic field, are eligible for sponsorship.

**2. Requests for Sponsorship**

**a. Nonimmigrant sponsorship processes**

Sponsoring units may sponsor eligible foreign nationals for nonimmigrant status for a minimum period of 30 days, and for the maximum period permitted by Federal regulations for the respective status. All applications and petitions associated with University sponsored non-immigrant statuses must be submitted to DOL and/or USCIS by Immigration Compliance Services/Office of Human Resource Services.

**i. Sponsorship Timeframes**

ICS application submission deadlines for requests to sponsor eligible foreign nationals for nonimmigrant statuses and immigrant classifications are tied to Federal filing deadlines.

Accordingly, ICS establishes strict deadlines that prospective and current nonimmigrant employees are responsible for meeting. ICS and the University assume no responsibility for late filings.

**b. Immigrant sponsorship processes**

Sponsoring units are responsible for providing ICS with all required administrative documentation to determine eligibility and to complete the applicable applications and petitions. Prospective and current non-immigrant employees are responsible for providing ICS with all required documentation requested by ICS to determine eligibility and complete the applications and petitions. All applications and petitions associated with University sponsored immigrant classifications are submitted to DOL and/or USCIS by the ICS unit.

**i. Application Deadlines for Immigrant Sponsorship**

Applications for EB-1B (Outstanding Professor or Researcher) sponsorship must be submitted to ICS no earlier than 6 months after the employment period in the applicable position begins, and no later than 18 months before the date that the maximum period of stay in H-1B status occurs.

Applications for sponsorship of eligible instructional employees (faculty) for the EB-2A/EB-2B (Member of the professions holding an advanced degree /Alien of exceptional ability who is not seeking a National Interest Waiver) immigrant classification must be submitted to ICS no later than twelve months following the date that the nonimmigrant employee was selected for the applicable position and no earlier than six months following the employment start date in the qualifying position.

Applications for EB-3 (Professional) immigrant sponsorship must be submitted to ICS no earlier than 6 months following the date that the employment period in the applicable position begins, and no later than 18 months before the date that the maximum period of stay in H-1B status occurs.

The EB-2A/EB-2B and EB-3 classifications, unlike the EB-1B classification, carry submission deadlines for applications that require the University to file applications within complex and unwavering USCIS deadlines.

Failure to meet filing USCIS filing deadlines can result in deportation eligibility imposed on the foreign national *worker*. Accordingly, ICS establishes deadlines that prospective and current nonimmigrant employees are responsible for meeting. ICS and the University assume no responsibility for late filings.

### **3. Offer of Employment to a Nonimmigrant Applicants**

Before issuing an offer of employment letter to a foreign national who requires sponsorship for an employment-based status, the sponsoring unit must receive written approval from ICS.

Sponsoring university units are required to include immigration sponsorship terms specified by ICS in all offer of employment letters issued to all foreign nationals sponsored for an employment-based status. A copy of such terminology is provided below:

*This offer and your active employment status with the University are contingent upon your eligibility to work under the provisions of all applicable immigration laws and regulations including the Immigration Reform and Control Act of 1986, as amended, and your providing the necessary documents to establish identity and employment eligibility to satisfactorily complete U.S. Citizenship and Immigration Services' Form I-9. As a foreign national who meets the qualifications for an employer-sponsored immigration status, the University of Florida, as your employer, is provided authority by immigration laws to request employment authorization on your behalf. The University, however, cannot guarantee that employment authorization or visas will be granted and assumes no responsibility if any request is denied, delayed or conditioned. All such determinations rest with USCIS and the DOS, respectively and are beyond the scope of the University's authority. All employees bear a continuing responsibility throughout their employment to maintain their eligibility to work in the U.S. and at the University in the position to which they are assigned. The University cannot pay a wage to any person not lawfully authorized to work regardless of the cause. Failure to timely receive or maintain authorization to be employed in the U.S. at the University in the relevant position shall automatically terminate your employment status at the University.*

### **C. Extension of Nonimmigrant Status**

Immigration regulations permit the University to extend immigration-related aspects of the employment period of an existing nonimmigrant beneficiary. The sponsoring unit may extend employment for a period of 240 days beyond the expiration date of the current nonimmigrant status or fewer days as the case may require, if appropriate, **after** and as provided in an explicit written authorization permission to do so from ICS; a separate written authorization from ICS is required for each nonimmigrant employee on the occasion of each extension. Applicable maximum periods of stay in respective nonimmigrant statuses are regulated and enforced by ICS.

#### **D. Amendment of Nonimmigrant Status**

Making a material change to the employment conditions of a nonimmigrant employee may adversely affect the employee's nonimmigrant visa status, compromise his or her authorization to work, and/or require the University to provide notice to or obtain authorization from federal agencies. A material change may include a change in duties, discipline of work, position title or classification, work location or unit, or compensation rate, as well as a leave of absence and any termination or suspension of employment. However, an increase in compensation resulting from a University-wide pay increase is not considered a material change.

Consequently, sponsoring University units are required to provide written notice to ICS at least two weeks before implementing any material change to the employment conditions of a nonimmigrant employee and, subject to the following two exceptions, must also obtain ICS' prior approval before implementing the material change: (1) If a nonimmigrant employee's employment conditions are subject to a material change due to the imposition of discipline, the sponsoring unit shall simultaneously notify the ICS (or provide advance notice if possible without affecting the imposition of discipline); and (2) If a nonimmigrant employee's employment conditions are subject to a material change due to a law enforcement action, a medical or mental health condition, or any other action taken or caused by the employee without participation by the sponsoring unit, the sponsoring unit shall inform the ICS promptly upon learning of the situation. Failure to provide information about a material change may result in serious Federal consequences for the University, the position responsible for informing the ICS who fails to do so, and the nonimmigrant employee.

## **E. Termination of Employment of H-1B Beneficiary**

### **1. Employer's Responsibility for Reasonable Return Transportation Costs to H-1B employee's Last Place of Permanent Residence**

In the event an H-1B employee's employment period is terminated by the sponsoring department, for any reason, prior to the end date of the validity period of the current H-1B petition, the sponsoring University unit will be liable for reasonable costs of return transportation to the last place of foreign residence. Reasonable return transportation costs include: (1) a one way airfare ticket for the beneficiary, solely (baggage and freight cost not included); (2) transportation costs to the airport determined, by the sponsoring University unit, to be the departure location; and (3) transportation costs from the airport determined by and evidenced by the H-1B employee to be the last place of permanent residence abroad. The sponsoring unit has the authority to arrange the travel itinerary for the foreign national whose period of employment is being terminated. Before issuing documents that provide for return transportation, the sponsoring unit also has the obligation to issue a written notice, to the foreign national, carrying an acknowledgement clause that provides detailed information regarding the travel arrangements.

### **2. Responsibility for Notification of Termination of Sponsored Nonimmigrant Employees**

In addition to the normal University termination procedures specified by HRS, the sponsoring University unit is required to inform ICS of such a termination no later than 5 business days before the effective date of the termination.

## **F. Visa Stamps and Entry/Re-entry to the U.S.**

Responsibility for initiating and completing Department of State and DHS/Custom and Border Protection processes required to obtain permission to enter and re-enter the U.S. during the sponsorship period lies solely with the prospective or current employee. ICS may provide assistance with acquiring visa stamps and entry documents; however, regulatory authority and discretion to grant such permissions is held exclusively by Federal agencies and the University assumes no responsibility for denial of entry or re-entry.

## **G. Immigrant Classification Sponsorship Criteria for Permanent Legal Resident (PLR) Status**

The University will support petitions for employment-based immigrant classifications when evidence of the following criteria is provided to ICS: (1) the position offered is permanent; (2) the position is full-time; (3) the nonimmigrant employee and the conditions of employment meet applicable criteria established by Federal immigration law and all other applicable Federal and State laws, and University regulations and requirements; and (4) the sponsoring University unit agrees to support the petition and to timely provide the administrative documentation required to complete the application or petition, and file the same on behalf of the nonimmigrant employee. Postdoctoral, medical resident and trainee positions are temporary by their nature, and, as a consequence, nonimmigrant employees who hold such positions are not eligible for sponsorship.

#### **1. Other Employment-based Petitions and Applications**

Non-immigrant employees may personally file self-sponsored employment-based petitions for immigrant classifications: EB-1A for persons of extraordinary ability; EB-1C for multi-national executives and managers; and EB-2 (National Interest Waiver) for aliens of exceptional ability in the sciences, arts, or business whose presence and activities in the U.S. are in the national interest. Private legal counsel and services may be retained by, and at the sole cost of, non-immigrant employees for petitions for such classifications. For these employee-sponsored cases, employing University units may provide a copy of the current *offer of employment* letters and/or a *confirmation of current employment* letters. However, due to University policy regarding employment appointments, departments/centers are not permitted to issue letters to foreign nationals that indicate that he or she will be offered employment on a permanent basis without written permission issued by ICS.

#### **H. Maintenance of Sponsorship Records and Federal Regulatory Public Audit Files**

On behalf of the University and the applicable current and former sponsored beneficiaries, Immigration Compliance Services is responsible for maintaining original documents and for reproduction of documentation associated with the University's sponsorship processes; Federal law requires these documents be made available for inspection. All sponsoring units and nonimmigrant employees are required to cooperate with ICS to fulfill this responsibility.

#### **V. Forms Associated with Immigration Sponsorship**

Only the ICS has the authority to submit Federal forms associated with the University's sponsorship of employment-based nonimmigrant statuses and immigrant classifications.

#### **A. Sponsoring University Unit Responsibility**

The following ICS generated forms are associated with the University sponsorship of employment-based nonimmigrant statuses and immigrant classifications. The completion and submission responsibility is assigned to the University sponsoring unit and the applicable prospective or current employee who is the beneficiary of a nonimmigrant status, jointly.

- i. ICS; Form ICS-129R (Request for Sponsorship of Non-immigrant Status)
- ii. ICS; Form ICS-129T (Notice of Sponsorship Termination)
- iii. ICS; Form ICS-140A (Request for Sponsorship of Immigrant Classification EB-1B for Outstanding Professor or Researcher)
- iv. ICS; Form ICS-140B (Request for Sponsorship of Immigrant Classification EB-2A or EB-3 for a Member of the Professions, holding an advanced degree; or a Professional, at a minimum possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree, respectively)

#### **B. ICS Responsibility**

The following Federal government generated forms are associated with the University sponsorship of employment-based nonimmigrant statuses and immigrant classifications. The completion and submission responsibility is assigned to the Immigration Compliance Services unit. ICS has the sole authority for submitting such forms on behalf of the University.

- i. USCIS; Form I-129 (USCIS Petition for a Nonimmigrant Worker)
- ii. USCIS; Form I-907 (Request for Premium Processing Service)
- iii. ETA Form 9141 (Application for Prevailing Wage Determination)
- iv. ETA; Form ETA 9035 (Labor Condition Application for Nonimmigrant Workers)
- v. ETA; Form 9089 (Application for Permanent Employment Certification)
- vi. USCIS; Form I-140 (USCIS Petition for an Alien Worker)
- vii. USCIS; Form I-824 (Application for an Action on an Approved Application or Petition)
- viii. USCIS; Form I-290B (Notice of Appeal or Motion)

### **C. Nonimmigrant Employee Responsibility**

Submission of certain applications forms issued by the Federal government that are associated with the sponsorship of employment-based nonimmigrant statuses and immigrant classifications are the responsibility of the nonimmigrant employee. However, Federal regulations permit the University to submit, but not complete, these forms on behalf of the beneficiary of an employment-based petition when Federal regulations provide for “concurrent filings” of the applicable forms. Therefore, ICS shall submit such forms, on behalf of the University, to the appropriate Federal agency when regulatory conditions are met. These forms include:

- i. USCIS; Form I-539 (Application to Extend Change Nonimmigrant Status)
- ii. USCIS; Form I-485 (Application to Adjust Status) and all associated USCIS forms

Notwithstanding any provision of this policy, the prospective or current employee is ultimately responsible for obtaining and maintaining appropriate nonimmigrant visa statuses and any other required authority to work in the U.S., at the University and in the assigned position. The University (including the ICS) assumes no liability for late filings or for any denial, delay or conditioning of visas or other authorizations.

**VI. Terminology and Definitions Associated with Immigration Sponsorship**  
**D.**

<b>AOS</b>	<b>Adjustment of Status</b>	
<b>AWR</b>	<b>Actual Wage Report</b>	
<b>COS</b>	<b>Change of Status</b>	
<b>CBP</b>	<b>Customs and Border Protection</b>	
<b>DHS</b>	<b>Department of Homeland Security</b>	
<b>DOL</b>	<b>Department of Labor</b>	
<b>DOS</b>	<b>Department of State</b>	
<b>EAM</b>	<b>Employment Authorization Memo</b>	
<b>EOP</b>	<b>End of Program</b>	
<b>EOS</b>	<b>Extension of Status</b>	
<b>ETA</b>	<b>Employment and Training Administration</b>	
<b>HRS</b>	<b>Human Resource Services</b>	
<b>ICS</b>	<b>Immigration Compliance Services</b>	
<b>LCA</b>	<b>Labor Condition Application</b>	
<b>LPR</b>	<b>Legal Permanent Resident</b>	
<b>NIV</b>	<b>Nonimmigrant Visa</b>	
<b>PLR</b>	<b>Permanent Legal Resident</b>	
<b>PRC</b>	<b>Permanent Resident Card</b>	
<b>PWD</b>	<b>Prevailing Wage Determination</b>	
<b>RFE</b>	<b>Request for Evidence</b>	
<b>USCIS</b>	<b>United States Citizenship and Immigration Services</b>	
	<b>California Service Center</b>	<b>CSC</b>
	<b>Nebraska Service Center</b>	<b>LIN</b>
	<b>Vermont Service Center</b>	<b>VSC</b>
	<b>Texas Service Center</b>	<b>TSC</b>

<b>University Sponsored Employment-based Non-Immigrant Statuses</b>	
<b>H-1B</b>	<b>Nonimmigrant worker in a specialty occupation</b>
<b>TN-1</b>	<b>Nonimmigrant NAFTA Professional – Citizens of Canada</b>
<b>TN-2</b>	<b>Nonimmigrant NAFTA Professional – Citizens of Mexico</b>
<b>E-3</b>	<b>Nonimmigrant Professionals – Citizens of Australia</b>
<b>O-1A</b>	<b>Nonimmigrant workers who possess extraordinary ability in the sciences, arts, education, business, or athletics</b>

<b>University Sponsored Employment-based Preference Immigrant Statuses</b>	
<b>EB1-2 203(b)(1)(B)</b>	<b>Outstanding Professor or Researcher</b>
<b>EB2 203(b)(2)(A)</b>	<b>A member of the professions holding an advanced degree</b>
<b>EB2 203(b)(2)(A) Schedule B</b>	<b>And persons with exceptional qualifications/abilities</b>
<b>203(b)(3)</b>	<b>Skilled workers, professional and other workers</b>