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## POLICY & PROCEDURE

**Subject:       HIRING OF FOREIGN NATIONALS**

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### 1.0    POLICY

Diversity is an important part of Southern University System core values. The employment of foreign nationals in faculty and staff positions is an accepted practice for achieving diversity. The System and foreign nationals, however, are subject to federal laws and regulations of the Departments of State, Labor, and Homeland Security (specifically, USCIS). Success in obtaining approval of petitions for foreign national temporary and permanent employees in any non-immigrant or immigrant status is dependent upon responsible and full adherence to law, regulation, and procedure. Failure to adhere to such laws subjects the System to potentially serious sanctions for employing individuals who are not authorized to work in the United States. This involves the System's sponsorship of the employee as he/she applies for legal status and employment visa filing fees. However, these fees cannot be paid by the foreign national employee.

### 2.0    PURPOSE

The purpose of this System policy is to define and establish the application process for H1-B (Temporary Worker) and Permanent Residence (Green Card). All System Campuses must adopt this policy and return the policy to the Associate Vice President for Human Resources.

### 3.0    DEFINITIONS

**Permanent Resident** - A "Permanent Resident" is an individual who is authorized to live and work permanently in the United States. The System may choose to sponsor a foreign national (beneficiary) to become a Permanent Resident based on a permanent job offer. The petitioner may sponsor a current or prospective employee who may qualify for one or more of the Employment-Based (EB) immigrant visa categories. The EB category relates to the kind of work that the non-immigrant has. Each EB category has certain requirements that must be met. See below.

#### **Permanent Worker Visa Preference Categories**

- 1<sup>st</sup> First Preference EB-1 - This preference is reserved for individuals of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors or researchers; and multinational executives and managers.
- 2<sup>nd</sup> Second Preference EB-2 - This preference is reserved for individuals who are members of the professions holding advanced degrees or for individuals with exceptional ability in the arts, sciences, or business.



- 3<sup>rd</sup> Third Preference EB-3 - This preference is reserved for professionals, skilled workers, and other workers:
  - Skilled worker: Individual whose job requires a minimum of 2 years training or work experience.
  - Professional: Individuals whose job requires at least a U.S. baccalaureate degree or a foreign equivalent and are a member of the professions.
  - Unskilled or other worker: Individuals performing unskilled labor requiring less than 2 years training or experience, not of a temporary or seasonal nature.
  
- 4<sup>th</sup> Preference EB-4 - This preference is reserved for "special immigrants," which includes certain religious workers, employees of U.S. Foreign Service posts, retired employees of international organizations, alien minors who are wards of courts in the United States, and other classes of aliens.
  
- 5<sup>th</sup> Preference EB-5 - This preference is reserved for business investors who invest \$1 million or \$500,000 (if the investment is made in a targeted employment area) in new commercial enterprise that employs with at least 10 full-time U.S. workers.

#### 4.0 H-1B TEMPORARY EMPLOYMENT

The H-1B visa is used for the temporary employment of a foreign worker in a specialty occupation. It requires the U.S. employer to file a petition for the services of the foreign worker with U.S. Citizenship & Immigration Services. The basic requirements are that the employment position that is being filled, together with the nature of the System's needs, require the services of an individual with at least a bachelor's degree in a specific field, and that the foreign worker applicant possesses the relevant degree or equivalent experience to fill that position. The foreign worker's non-U.S. educational credentials and/or experience must be formally evaluated in order to confirm that they are equivalent to, at minimum, a U.S. bachelor's degree.

An H-1B visa may be requested for an initial period of up to three (3) years. The maximum total period of time a foreign worker can hold H-1B status is six (6) years. After the six (6) year mark is reached, and if no application for permanent residency is pending with U.S. Citizenship & Immigration Services, the foreign worker can return abroad for at least one (1) year and will be eligible to enter the U.S. again in H-1B status for another six (6) year maximum stay. The H-1B visa is available for full-time or part-time employment. If a foreign worker wishes to work for more than one (1) employer, he/she must have an approved H-1B petition for *each* employer.

Upon approval of the H-1B petition, U.S. Citizenship & Immigration Services will send an approval notice to the designated U.S. Consulate abroad, where the employee will present his/her passport for a H-1B visa stamp. Upon entering the U.S., an immigration officer at the airport or other port of entry will issue an I-94 card, which is proof of H-1B status, and allows the foreign



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Page	3 of 6

worker to begin his/her employment with the System. Or, if the foreign worker employee is presently in the U.S., has properly maintained his/her current immigration status, then he/she is eligible to "change status" to H-1B and does not need to depart the U.S. Once a "change of status" petition has been filed, the foreign worker should not depart the U.S. until it is approved. If foreign travel is absolutely required while the petition is pending, please consult the System's attorney for further assistance. If the foreign worker is presently in H-1B status with another employer, special "portability" rules may apply which might allow him/her to begin working for the System *upon filing* the new H-1B petition to change employers. The H-1B visa is valid only for employment with the petitioning employer.

Spouses and unmarried children under 21 are eligible for H-4 dependent visa status. They are not allowed to work unless they obtain an independent visa or status that authorizes employment. Those who are in H-4 status may attend school.

#### **A. Labor Condition Application**

Prior to filing the H-1B visa petition with U.S. Citizenship & Immigration Services, it is necessary for the System to file a Labor Condition Application with the U.S. Department of Labor (DOL). The application requires that the University, as the prospective employer, agree to several specific statements, which are for the benefit of U.S. workers. The first is an assurance that the foreign worker will receive the "required wage," which is the same pay as other similarly employed workers at the University, or the prevailing wage in the geographic region, whichever is higher. DOL regulations state that the H-1B worker cannot pay the attorneys' fees or other costs related to the H-1B if payment by the H-1B worker will reduce the salary to below the required wage. **If someone other than the employer will pay any fees and costs related to the H-1B petition, including through reimbursement or payroll deduction, you must let your attorney know, as there is a high likelihood of employer liability.**

The prevailing wage must be obtained from a government wage source or a recognized wage survey service for the position in which the employee will be hired, and for the designated geographic area. DOL regulations also contain a "no benching" requirement. The employer must continue to pay the offered wage even when the H-1 B holder is not working, unless the reason for not working is at the voluntary request of the foreign worker that is not related to the lack of work.

The H-1B foreign worker must be offered benefits and eligibility for benefits on the same basis and in accordance with the same criteria as the System offers to U.S. workers. The System will also affirm that the employment of the foreign worker in the H-1 B position will not adversely affect the working conditions of other employees who are similarly employed in the employment area.

Finally, on or before the date the Labor Condition Application is filed with the DOL, two notices must be posted in conspicuous places. These notices must contain specific information including



the job title and salary or salary range being offered to the H-1B foreign worker. Within one (1) day of filing the Labor Condition Application, supporting documentation must be available for inspection at the System or/a System Campus. Any individual or group can request a review of this information.

## **B. Employer Obligations**

In addition to the Labor Condition Application requirements, there is an H-1B provision that the System should note. An H-1B employer is liable for the reasonable cost of return transportation to the H-1B worker's country of last residence if the foreign worker is dismissed from employment before the end of the period of stay granted on the H-1B. However, if the H-1B worker voluntarily ends his or her employment, the employer is not liable for return transportation expenses. Also, if the H-1B worker stays with the employer for the entire period of the visa petition, the employer has no obligation for return transportation expenses.

## **C. Fees**

There are various fees associated with filing an H-1B visa petition. In addition to the attorney legal fees, fees include:

- H-1B Petition Base Filing Fee
- American Competitiveness and Workforce Improvement Act (ACWIA) fee:
  - o Employers with one to 25 full-time equivalent employees, unless exempt
  - o Employers with 26 or more full-time equivalent employees unless exempt
- Fraud Prevention and Detection Fee
- Optional Premium Processing Fee to obtain decision within 15 calendar days of filing

## **5.0 PROCEDURE - H-1B Visa**

The System hiring department (petitioner) and foreign national (beneficiary) must complete a multi-step process prior to the beneficiary obtaining Permanent Residency status. The process of obtaining a Permanent Resident status will differ. For some visa categories, before the hiring department can submit an immigration petition to the USCIS the System must obtain a certified Labor Certificate from the DOL Employment and Training Administration (ETA). DOLETA will verify that there are insufficient available, qualified, and willing U.S. workers to fill the position being offered at the prevailing wage; and that hiring the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. Once the Labor Certification application is certified by DOLETA, it will be submitted to the USCIS Service Center with a Form I-140.

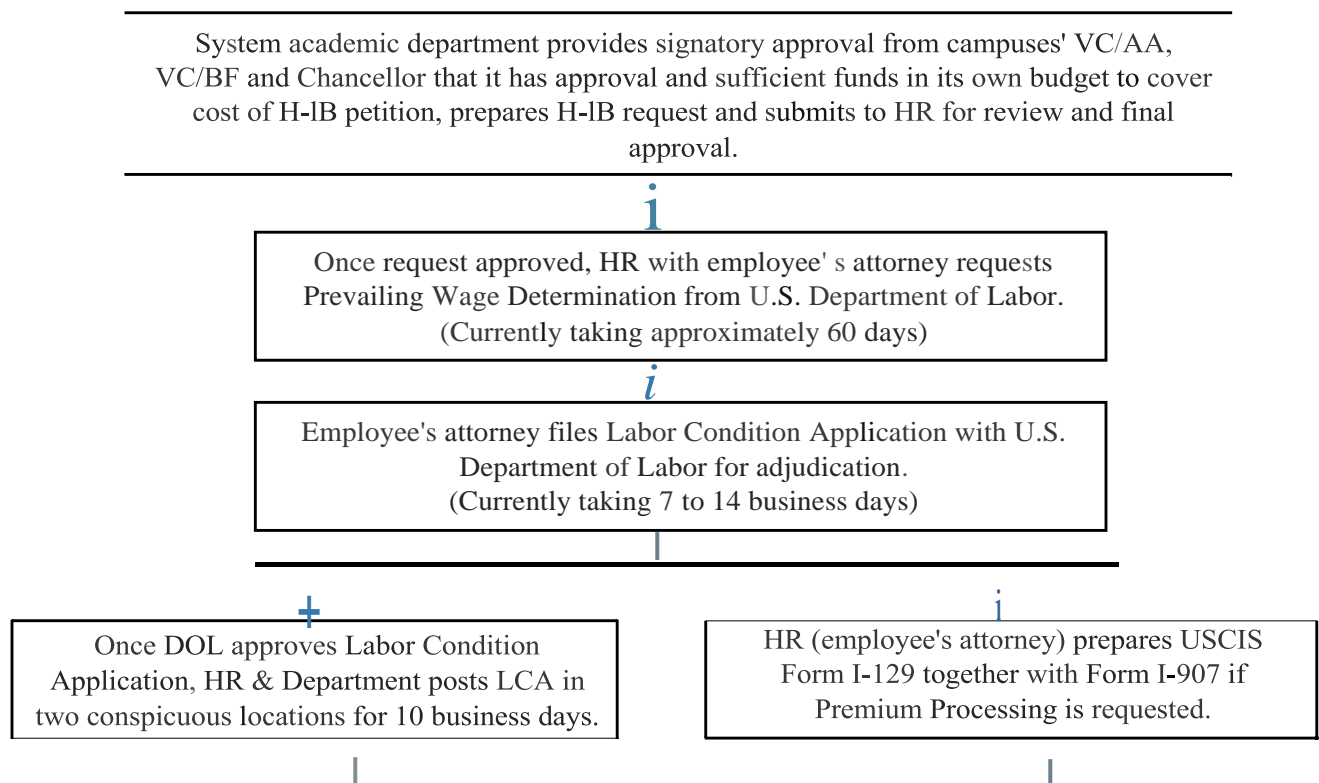


The System academic or non-academic department is responsible for covering the attorney fees, mandatory government filing fees, and all related costs for preparing and filing an H-1 B petition with U.S. Citizenship & Immigration Services. If a System academic department determines that it requires the services of a foreign worker in an H-1B capacity, the System *department* is responsible for demonstrating that it possesses sufficient funds within its own operating budget to cover the entire cost of the H-1B petition. If the System department determines that sufficient funds exist to cover the cost of the H-1B petition, then it must prepare and submit an H-1 B request to the System or Campus Human Resources (HR) Department for review and final approval before proceeding with the petition.

**This request must include documentation and approval of sufficient funds for processing and payment of the H-1 B visa petition from the respective campuses' Vice Chancellor of Business and Finance (VC/BF), and SUS Vice President of Business and Finance (VP/BF).**

**The System will only petition for an individual's permanent residency at the discretion of the Department Head/Chair, Academic Affairs/Provost and Campus Chancellor. Must have approval letter.**

Please see the following flow chart for a step-by-step guideline of the H-1 B operating procedure and associated timeline:





USCIS receives submitted H- IB petition from the University and will issue and mail I-1797 Notice of Receipt  
(Typically takes 1 to 2 weeks)

Dept. returns completed Certificate of Posting to HR. Employee's attorney prepares H-IB petition for submission to USCIS for adjudication.

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USCIS processes H-IB petition  
(Currently taking 8 to 9 months, or 15 calendar days if Premium Processing is requested at an additional fee)

H-IB employee can proceed with normal hiring process: PVA, EPAF, PEA, PEC, CBC, Employment Application with required signature.

Permanent Resident (Green Card)