Overview of Hiring Foreign Nationals

Fall 2019

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Common Immigration Statuses

• F-1
  • OPT
  • STEM OPT
• J-1
  • Visiting Scholar / Visiting Professor
  • Short-term Scholar
  • Academic Training

• Visitors (B-1/B-2 or WB/WT)
• H-1B
• E-3
• O-1
• TN
Common Immigration Terminology

- Visa vs. Status
Common Immigration Terminology

• I-797 Notice of Action (Receipt/Approval)
Common Immigration Terminology

• DS-2019 (J-1 and J-2)
Common Immigration Terminology

• Form I-20 (F-1 and F-2)
Common Immigration Terminology

- I-94 Card
Common Immigration Terminology

• USCIS

• USCIS : United States Citizenship and Immigration Services

• Mission statement: USCIS administers the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.

International Student and Scholar Services
Common Immigration Terminology

• SEVIS

• Student and Exchange Visitor Program

• System implemented by Homeland Security to manage foreign students and exchange visitors.
International Students Before Graduation

• On-campus employment  
  • On Penn’s payroll, at Penn’s premises, and for Penn’s benefits  
  • Less than 20 hours per week during school sessions

• Must end by I-20/DS-2019 program end date
International Students After Graduation

• OPT for F-1 Students
  • Initial Optional Practical Training – 12 Months
  • STEM OPT Extension – 24 Months
    • Up to 24 additional months
    • Form I-983 Training Plan completed by Department / PI
    • Must establish an employer-employee relationship
    • Requires attestations, reporting, and appropriate wage
International Students After Graduation

• Academic Training (AT) for J-1 students
  • Master: up to 18 months
  • PhD: up to 36 months

• In Both OPT/AT Cases
  • Not intended for student positions
  • Training in field directly related to major field of study
  • If not Penn students, ISSS role is advisory only. These employees remain under the sponsorship of their home institutions
Visitors: B-1/B-2 or WB/WT (ESTA)

Business (B-1 or WB), for Pleasure (B-2 or WT)

- **Purpose**
  - Consult with business associates in the US
  - Attend conventions, conferences, or seminars

- May not receive a salary from a US source for services rendered in US

- May receive *honorarium* from Penn if:
  - Stay at Penn is no longer than *nine days* AND
  - Has not received honoraria from more than *five institutions* or organizations over the last six months.

International Student and Scholar Services
International Scholars and Employees

- J-1: Exchange Visitors
- H-1B: Temporary Workers
- E-3: Australian Treaty Workers
- TN: NAFTA Professionals
- O-1: Person of Extraordinary Ability
Processing Times for Work Authorization

• OPT : 5 months to 7 months as of 12/7/2019
  • Documents sent to government, no premium processing available

• H-1B/ E-3
  • At least 60 days from submission to start date for ISSS
    • Late fee for cases outside of this timeline ($750)
  • Premium Processing available, otherwise 6.5 – 8.5 months

• J-1
  • At least 6 weeks (42 days) from submission to start date for ISSS processing
    • Late fee for cases outside of this timeline ($500)
J-1 Exchange Visitor (EV) Program

**Objective:** “…to increase mutual understanding between people of the United States and the people of other countries by means of educational and cultural exchanges…”

- J-1 categories at Penn: Professor/Researcher, Short-Term Scholar, Student Intern, Specialist

- **For non-permanent positions**
  - Non-tenure
  - Non-staff
J-1: Funding Requirements

Minimum funding amount:
- $27,180 per year ($2,265/month)
  - or defined levels for Post-Doctoral Researchers

Possible sources:
- Organization or institution in the foreign country
- Personal funding
- US or foreign government
- An organization or institution in the US that facilitates international exchange
- College or university
J-1 Mandatory Insurance

- Within 30 days of arrival, ALL non-postdoc J-1 Visiting Scholars and Student Interns are required to either:
  - Purchase a pre-selected J-1 Insurance Plan from Garnett-Powers, or
  - Waive out of the coverage requirement by submitting evidence of comparable or better insurance to Garnett-Powers.

- For questions regarding coverage or which plan is more appropriate, Visiting Scholars should contact Garnett-Powers directly.
H-1B Specialty Workers

• Temporary professional worker category for “specialty occupations”

• Position/employer specific i.e. dept., work site, title, etc.

• Position must require a minimum of a bachelor’s degree or higher in the specific specialty/field i.e. Bachelors in Finance...

• The H-1B employee must meet the minimum qualifications for the position at the time ISSS files the H-1B petition i.e. experience, degree, license, certificate etc.
H-1B Specialty Workers

- Must determine required wage which is the higher of the prevailing wage and the actual wage.

- **Prevailing wage**
  
  The wage paid to similarly situated employees in a specific occupation in the area of intended employment.
  
  - This analysis will be done by an ISSS adviser, to determine the most appropriate occupational code for the position.

- **Actual wage**
  
  The wage paid by the employer to workers with similar skills and qualifications (usually the wage being offered to the employee).
H-1B: Application Overview

Premium Processing is strongly recommended for all cases:

• Additional Fee of $1440
• Premium Processing provides a response within 15 days of submission to USCIS.
• Does not speed up processing time at ISSS
• Regular processing at USCIS: ~currently 9-11 months
• Allow additional time if employee needs to obtain a US visa
E-3 Australian Treaty Workers

• Similar to H-1B
• Available to citizens of Australia;
• Same qualifications as H-1B;
• Up to two year increments;
• Dependents of E-3 may apply for employment authorization with USCIS.

• Application Process:
  • ISSS does LCA only.
  • Employee applies at the consulate
  • In special cases, ISSS can do c/s or extension; no Premium Available so not recommended
Outside Legal Counsel Program

- Two law firms to handle
  - O-1: Person of Extraordinary Ability
  - Employment-based PR applications
    - Standard labor certification cases
    - Outstanding Professor/Researcher cases
    - Other PR categories

- Program policies, fees etc. per OGC & ISSS

- Submit Request form to ISSS to begin process
O-1: Person of Extraordinary Ability

The O-1 nonimmigrant category is for the employment of foreign nationals who have achieved and sustained national or international acclaim for extraordinary ability in the sciences, arts, education, business or athletics or FNs who have demonstrated a record of extraordinary achievement in the motion picture and television industries.

- Initial period of stay: up to 3 years with one-year extensions
  - no maximum cumulative duration limit like H-1B.
- Employment offer required/employee may not self-petition.
- Possible option for foreign nationals subject to 212(e) 2-year home residence requirement
- Employer is responsible for return cost of transportation abroad if O-1 employee is dismissed before O-1 expires
Questions from the Audience

• Are there scenarios when we can hire and pay students as contractors rather than employees?

• What is the best way to proceed with hiring a student when we are informed that their citizenship status is outdate or we are unsure of their citizenship status?

• Will the ISSS web site be revamped as it hard to locate information easily, especially forms
Questions?

Thank you!

ISSS provides guidance based on current regulatory information and is not a substitute for legal counsel.