

ABILENE CHRISTIAN UNIVERSITY
OFFICE OF HUMAN RESOURCES

Administrative Guidelines and Procedures
Effective Date: May 2012
Last Reviewed: May 2018

SUBJECT: Employment of Foreign National Faculty or Staff

PURPOSE: To establish guidelines and procedures for employing foreign national faculty or staff, and to ensure uniformity of approach to the process whereby ACU will assist with applications for temporary employment status or with applications for U.S. Lawful Permanent Residency. This document is intended to serve as a statement of ACU's position on assisting employees with immigration matters and expenses. It is not a full outline of the actual immigration process or the responsibilities of the various offices at ACU during that process. Decisions not covered by these guidelines and procedures will be made on a case-by-case basis.

DEFINITIONS:

- *Foreign National:* Any person residing in the United States who is not a U.S. citizen.
- *Department of Homeland Security (DHS):* Oversees all functions of the USCIS and other governmental agencies assigned to administering and protecting U.S. borders.
- *U.S. Citizenship and Immigration Services (USCIS):* USCIS is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.
- *U.S. Department of Labor (DOL):* The Office of Foreign Labor Certification (OFLC) of the DOL provides national leadership and policy guidance to carry out the responsibilities of the Secretary of Labor under the Immigration and Nationality Act, as amended, concerning foreign workers seeking admission to the United States for employment.
- *Immigrant:* Foreign national in the United States for an indefinite period as a U.S. Lawful Permanent Resident, i.e., "green card" holder. Can remain in the United States indefinitely and work without restriction for any U.S. employer.
- *Nonimmigrant:* Foreign national in the United States for a finite period on a temporary legal status. Can work only for a petitioning employer for the duration granted by the DHS.
- *SAMPLE NONIMMIGRANT CLASSIFICATIONS:*
 - *F-1:* Status accorded to foreign national students admitted to the United States to study in an approved program.
 - *J-1:* Status accorded to foreign national exchange visitors including students, faculty, researchers, and scholars eligible to conduct duties as delineated by their status and program sponsor.

- **H-1B**: Status accorded to foreign national specialty occupation professionals who have been petitioned by an employer for a position that requires a bachelor degree or its equivalent as a minimum for entry into that position.
 - **TN**: Status accorded to Mexican or Canadian foreign national who has been petitioned by an employer for a position listed in the North American Free Trade Agreement.
 - **O-1**: Status accorded to foreign nationals who have reached the very top of their field of endeavor and are considered one of the top experts in their field.
 - *Arrival/Departure Record (Form I-94)*: Small, white card generally stapled into foreign national's passport upon entry into the United States. This document lists the foreign national's status, date of entry, name, and date the status expires.
 - *Visa*: Stamp placed in the foreign national's passport that enables the foreign national to apply for entry into the United States in the status listed on the visa.
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ACU will not knowingly employ, or continue in employment, individuals who do not meet the requirements of federal laws pertaining to immigration and naturalization. Further, all faculty and staff of ACU must complete a Form I-9, Employment Eligibility Verification, in the presence of a designated Human Resources representative of ACU within three (3) days of commencing employment as per the Immigration Reform and Control Act of 1986 (IRCA).

ACU will select the best qualified applicant without regard to race, color, sex, national origin, age, disability, or veteran status.

United States Federal Law strictly regulates the employment of foreign nationals in the United States. Only authorized university administrators can sign applications and petitions to be filed with the USCIS, DOL, or other immigration-related government agencies on behalf of the university related to the employment of foreign national faculty and/or staff. These applications or petitions include, but are not limited to, the following:

1. ETA 9035, Labor Condition Application, submitted to the DOL with an H-1B;
2. ETA 9089, Labor Certification Application, submitted to the DOL to initiate the "green card" process on behalf of an employee of ACU; and
3. Form I-129, Petition for a Nonimmigrant Worker, submitted to the USCIS.

All applications and petitions must be reviewed by the University's designated immigration attorney before these documents are submitted to the appropriate government agency. No ACU employee may sign documents related to an immigration filing without the specific authorization of the Office of General Counsel. Services rendered to, and on behalf of, foreign national employees under any aspect of these guidelines and procedures are at the discretion of ACU. No right or entitlement accrues to any employee by virtue of these guidelines and procedures, or by virtue of having received any services under these guidelines and procedures.

These guidelines and procedures do not relieve foreign national employees of their responsibilities in maintaining their immigration status, nor do they limit an employee's right to be represented by competent legal counsel.

If these guidelines and procedures are ever in conflict with existing federal immigration law, federal law prevails.

PROCEDURES:

Departments with job openings should consult with the Office of Human Resources prior to initiating the recruitment process. Working closely with the Office of Human Resources will ensure that university policies are adhered to, federal law is complied with, and that timing and other hiring issues are resolved prior to the individual's start date or the start of the semester in which in the individual's employment will begin.

When interviewing candidates for employment, the hiring department may obtain information concerning immigration status when appropriate. As a general rule you should never specifically request a potential employee's employment eligibility documents before making an offer of employment. This may seem unrealistic but you must rely on an applicant's assertion that he/she is authorized to work until you are required to complete the I-9 form. You are permitted to ask applicants two questions: "Are you authorized to work in the U.S. for ACU," and "will you ever require our sponsorship to continue working?"

During the course of the hiring process, a foreign national employee may require sponsorship to work for ACU. If the applicant asks you to sponsor him/her for a visa or for permanent residence, he/she has opened the door for a discussion of his/her status, and you are unlikely to run afoul of any anti-discrimination provisions: For this reason, all job offers should be made subject to the prospective employee's authorization to work in the United States. When appropriate, the hiring department should include the following language in its offer letters to potential candidates:

This offer is contingent upon your immigration status being approved by the USCIS. Approval of your employment is contingent upon the production of documentation of identification and eligibility for employment as required by the Immigration Reform and Control Act of 1986.

TEMPORARY WORK AUTHORIZATION:

The Office of General Counsel will coordinate and handle the processing of H-1B and/or other temporary employment-related statuses for foreign nationals seeking permission to work in the United States on behalf of ACU. The Office of General Counsel will initiate the Petition process upon receiving a copy of the signed offer letter, specifying the terms and conditions of employment, from the appropriate Dean and Provost for faculty positions or Human Resources for staff positions.

The hiring department or unit at ACU will pay the legal and filing fees associated with a foreign national employee's H-1B or other temporary employment-related status Petition. In the case of fees not normally associated with the particular process, i.e., request for expedited processing by the USCIS or filing fees for dependent applications, the particular department must decide whether to pay these fees after considering the specific business-related necessity for the request.

The foreign national employee **must** use ACU's immigration attorney. In keeping with these guidelines and procedures, no ACU employee or privately retained attorney may sign documents related to an immigration filing.

The fees associated with a foreign national employee's Petition for H-1B or other temporary employment-related status will be paid as follows:

1. Filing fees: The hiring department will be responsible for these costs.
2. Legal fees: The hiring department will be responsible for these costs.
3. Dependent filing fees (if applicable): The foreign national employee is responsible for these costs. ACU is not responsible for these costs unless prior authorization has been obtained by the department or employing unit. In cases where authorization has been obtained, these costs will be paid by the hiring department.
4. Dependent legal fees (if applicable): The foreign national employee is responsible for these costs. ACU is not responsible for these costs unless prior authorization has been obtained by the department or employing unit. In cases where authorization has been obtained, these costs will be paid by the hiring department.

U.S. LAWFUL PERMANENT RESIDENCY:

The Office of General Counsel will coordinate and handle the processing of the employer-related aspects of U.S. Lawful Permanent Residency for foreign nationals working at ACU. The Office of General Counsel will initiate the Petition process upon receiving the signed request, specifying the terms and conditions of employment, from the appropriate Dean and Provost for faculty positions or Human Resources for staff positions.

Before ACU will prepare, or assist in, petitioning to obtain permanent residency, the appropriate administrator of the hiring department, the University's immigration attorney, and the Office of General Counsel must agree to the appropriate strategy and specific applications to be filed. The filing fees and legal fees (if applicable) for the employer-related portions of the U.S. Lawful Permanent Residency process submitted to the U.S. Department of Labor on Form ETA 9089 and to the USCIS on Form I-140 will be paid by the employee's department. All legal fees, USCIS filing fees and costs associated with the preparation and filing of the remaining portions of the U.S. Lawful Permanent Residency process and submitted to the USCIS will be paid by the employee.

FACULTY: ACU will not sponsor foreign national faculty for U.S. Lawful Permanent Residence until after a determination has been made by the appropriate administrator of the hiring department. In no case should a foreign national faculty member's ability to apply for U.S. Lawful Permanent Residence be seen as a determination of the faculty member's eligibility or qualification for tenure at ACU.

STAFF: All staff members must be employed for at least two years before ACU will consider a request for initiating the process to obtain U.S. Lawful Permanent Residence. Foreign national staff that, because of timing or other immigration-related issues, require a determination before the two-year period has ended must obtain specific authorization from the appropriate administrator of the hiring department.

For purposes of these guidelines and procedures, employer-related portions of the U.S. Lawful Permanent Residency process only include Form ETA 9089, Application for Alien Employment Certification (where appropriate) and Form I-140, Immigrant Petition for Alien Worker. Employer-related portions **does not** include Form I-485, Application to Adjust Status, or Form DS-230, Application for Immigrant Visa. Upon approval of Form ETA 9089 and the Form I-140, the foreign national employee is responsible for ensuring that Form I-485 or Form DS-230 are timely filed with the appropriate government agency.

The foreign national employee **must** use ACU's immigration attorney. ACU enlists outside counsel to handle and/or assist with the filing of Form ETA 9089 and Form I-140 and will pay the attorney's legal fees associated with the preparation and filing of the employee's Form ETA 9089 and Form I-140 only. ACU will not pay any expenses or fees associated with the preparation and filing of a "green card" application through Form I-485 or Form DS-230 on behalf of a foreign national employee and the foreign national employee's family members.

Pursuant to these guidelines and procedures, no ACU employee or privately retained attorney may sign documents related to immigration on behalf of an ACU employee without the express written consent of the Office of General Counsel.

The Office of General Counsel will **not** provide legal advice to the foreign national employee. ACU will not advise the foreign national employee regarding the completion of Form I-485 or Form DS-230 or their submission to the appropriate office. ACU will not advise the foreign national employee with regard to immigration issues concerning family members of the employee.

SUMMARY OF THE PAYMENT OF CERTAIN IMMIGRATION-RELATED EXPENSES:

ACU will pay the USCIS filing fees and related expenses, i.e., overnight courier fees, for the filing of all nonimmigrant documents (including H-1B, TN, and O-1) as well as Form ETA 9089 on behalf of foreign national employees.

ACU will not pay the USCIS filing fees and related expenses related to the immigration status of a spouse, children, parents, or other dependents of the foreign national employee.

The following items are not reimbursable expenses:

1. Costs related to immigration matters for a spouse, children, parents, or other family members;
2. Travel that may be required by the foreign national employee or his dependents to qualify for immigration-related objectives, i.e., to obtain a visa;
3. Travel that may be required by the foreign national employee to meet with an immigration attorney or USCIS official;
4. Costs of physical examinations or other medical or psychological reviews;
5. Costs of evaluating foreign academic credentials or translation of foreign documents;
6. Costs of telephone calls initiated by the foreign national employee.

Some immigration-related expenses either specified or not specified herein may be paid by ACU if and only if approval has been granted by the employee's department (in consultation with the Office

of General Counsel) prior to the expense being incurred. Approval of expenses after-the-fact will be reviewed only in rare circumstances and approved on a case-by-case basis.

ACU RESERVES THE RIGHT TO MAKE EXCEPTIONS, MODIFY, OR ELIMINATE THESE ADMINISTRATIVE GUIDELINES AND PROCEDURES. THIS DOCUMENT SUPERCEDES ANY AND ALL PREVIOUS POLICIES, PROCEDURES, AND DIRECTIVES RELATED TO THIS SUBJECT.