

Sponsorship of Employees For United States Permanent Residence

Policy 602.33

1 Introduction

1.1 Appalachian State University (“University”) attracts a number of outstanding scholars from around the world to study, conduct research, and teach at the University. Some of these individuals are students, but a large number of scholars serve with distinction as members of the faculty and professional staff sponsored by the University.

1.2 Some foreign nationals begin their employment at the University in temporary, non-immigrant work status such as J-1, H-1B, TN or F-1 (OPT – work authorized). In addition to holding temporary, non-immigrant status, most are also in temporary positions. The University may offer permanent residence, “Green Card,” sponsorship only to full-time, permanent employees in academic job classifications (tenure track faculty members) at the University. The qualifying positions include professor, associate professor, assistant professor and research associate (a department must have secured funding for at least three years in the future for the University to sponsor a research associate). The University does not sponsor non-teaching professional staff or visiting lecturers for permanent residence. Obtaining permanent residence for a University employee requires a substantial commitment of University resources. Therefore, the University will not begin the process until after a faculty member has been employed for one full semester. In accordance with federal requirements, the University will sponsor a foreign national for permanent residence only when there is a reasonable expectation that the individual will continue to be employed by the University for a substantial period of time (generally three years or longer).

1.3 This policy outlines procedures for the employment-based sponsorship of employees for U.S. permanent residence as approved by the Chancellor. It is intended for use by University departments with employees in temporary, non-immigrant employment-based classifications whom the department wishes to retain on a permanent basis. It should be consulted and incorporated into any negotiations regarding University sponsorship for permanent residence which may take place at the time of initial hire or thereafter.

2 Scope

2.1 This policy applies to all EHRA non-faculty research associates and tenure track faculty members hired at the University that have completed one full semester of employment.

3 Definitions

Individuals immigrate to the United States in a variety of ways: through close family members who are United States citizens or permanent residents; under the sponsorship of employers who offer them permanent jobs, by establishing that they are individuals with extraordinary abilities which will benefit the national interest of the United States; through employment creation and investment; as refugees or asylees; under special diversity programs; etc. What follows is a definition of non-immigrant versus immigrant status; the use of these immigration categories for employment at the University; and information regarding the University’s policies and procedures for the sponsorship of an employee for U.S. permanent residence.

Non-Immigrant Categories: The following are a few of the many non-immigrant categories, which can be used to authorize temporary employment in the U.S. of foreign nationals through the sponsorship of an employer or authorized organization/entity. The categories listed are those which are most commonly used at the University.

3.1 F-1

Used for international students on assistantships, or practical training programs (after completion of studies at the University or other US institutions). Practical training for individuals in F-1 status is limited to twelve and up to twenty-nine months depending on the student’s field of study. In order to continue employment, the individual will need to provide proof of continued authorization, which typically is the result of a change to a different nonimmigrant classification based on the sponsorship of the University.

3.2 J-1

Used for Exchange Visitors (may be students, visiting professors, researchers or short-term scholars). J-1 undergraduate students or students in master’s degree programs may participate in “academic training” (analogous to F-1 practical training) for up to 18 months following completion of their degree requirements at the University or other US institutions. J-

1 students who have completed a doctoral program are eligible for up to 36 months of academic training following completion of their degree requirements. Visiting professors or researchers (both non-student categories) in J-1 status may be employed in temporary (non-tenure track) positions for a maximum of five years. Short-term scholars may be employed in temporary positions for a maximum of 6 months. A J-1 Exchange visitor may not hold a tenure-track position.

3.3 H-1B

Used to employ foreign nationals who qualify as individuals engaged in "specialty occupations," as defined by immigration law (i.e., university professors and other teachers, engineers, advanced business specialties, lawyers, architects, physicians). An individual may be employed for up to six years in H-1B status, approved in flexible increments not to exceed three years each.

3.4 TN (Trade NAFTA)

This classification is restricted to citizens of Canada and Mexico, and is limited to specific professions as defined by the North American Free Trade Agreement ("NAFTA"). There is no specific limitation on the number of years an individual may be afforded TN status; however, TN status may be denied on the basis of immigrant intent on the part of the sponsored individual as he or she is expected to retain the intent to return to his or her home country.

3.5 Immigrant Status

The terms "immigrant status," "green card," and "lawful permanent residence" are often used interchangeably. The process of applying for lawful permanent residence is lengthy and complicated. The process may be delayed through no fault of the University and approval is never guaranteed. Once a permanent resident is issued a Permanent Resident Card (commonly known as a "Green Card," or Form I-551), this card is evidence of his/her eligibility to reside permanently in the United States and to work without restriction.

4 Policy and Procedure Statements

4.1 It is the University's policy to consider sponsorship for permanent residence only for those employees whose positions meet immigration regulations for the definition of "permanent." The University reserves the right to suspend or terminate the permanent residence process at any time when an employee has failed to meet the Department or College's academic standards or the employee's employment status with the University changes. The following criteria shall be met for an individual to be sponsored by the University for permanent residence:

1. The position must be permanent in nature and must be full time. (Students, visiting scholars, visiting faculty, temporary and part time employees are not eligible for sponsorship). Pending promotions must be actually finalized prior to the paperwork for sponsorship being processed.
2. The hiring department at the University must intend to employ the individual for at least three more years. Funding for the position for a three-year period must be guaranteed. The permanent residence sponsorship process may take at least three years, and the job should be available to the applicant at the end of this three-year process.
3. The approval of the dean and departmental chair must be obtained. Although general information regarding permanent residence procedures and categories may be discussed beforehand, the Office of International Education and Development (OIED) will not initiate University-sponsored permanent residency processes unless it considered appropriate by OIED and until approval is received from the dean and departmental chair.
4. The Chancellor or his/her designee, has delegated the responsibility on behalf of the University to complete, sign and submit documents related to employment-based immigration matters for the University to OIED.

4.2 All paperwork related to University-sponsored permanent residency must be approved and submitted by OIED to ensure accuracy and consistency of the information that is provided to the US Government and its agencies. Please note that an employee is always free to obtain his/her own attorney to represent his/her personal interests in the immigration process at his/her own expense. However, any private counsel hired by the employee is not permitted to represent the University in the immigration process.

4.3 If an employee does not qualify for University sponsorship for permanent residence, the employee may be able to petition on his/her own behalf or through sponsorship by a family member.

4.4 The process of sponsoring an employee for permanent residence through employment requires the University to petition the immigration service on behalf of the employee. The individual's eligibility to apply for permanent residence through employment is based upon the approval of the University's petition. In most cases in the University context, this is a three-step process requiring the University to complete the following:

1. File an Application for Alien Employment Certification (more commonly known as "Labor Certification") with the Department of Labor (DOL);

2. Upon certification by DOL of the application, file an Immigrant Petition for an Alien Worker with the United States Citizenship and Immigration Services (USCIS).
3. Following approval of the Immigrant Petition by the USCIS (or filed concurrently with the University's filing of the Immigrant Petition if eligible to do so), the employee can then file his/her individual application for adjustment of status to permanent residence with the immigration service, or follow a process called "consular processing" of an immigrant visa application.

4.5 The fees and costs associated with obtaining permanent residency can be extensive. The University will only pay the standard filing fee for the Immigrant Petition for an Alien Worker. The employee may pay the optional expedited processing fee if the employee wishes. All other costs such as legal fees and medical fees associated with obtaining permanent residency are solely the responsibility of the employee.

4.6 The University may pursue sponsorship on behalf of an employee based on other immigration Categories, such as Outstanding Researcher, but only after OIED reviews and evaluates the viability of pursuing sponsorship on other categories.

4.7 The process of obtaining permanent residence through employment is complex. Each case requires individual review and analysis along with knowledge of US immigration law as it relates to immigration through employment (business immigration law). The employee's educational credentials, professional experience, standing within the larger academic community (both nationally and internationally), reputation within the particular field of expertise, the position being offered, the date the position was offered, the requirements of the position, and/or the individual's previous immigration history must all be taken into consideration. The hiring entity – the University college/school, academic department, or research unit – is advised to familiarize itself with the process prior to requesting the University undertake a commitment to sponsor an employee for permanent residence. This is most easily done by contacting the OIED's Director of International Student and Scholar Services and Outreach at 828-262-2046.

4.8 Obtaining permanent residence on behalf of a foreign national is a detailed and time-consuming process, which requires a minimum of one year and often as much as two years to three years to complete, depending upon the particular circumstances of the case. In the case of Applications for Permanent Employment Certification for tenure-track faculty appointments, failure to act within a reasonable time period may jeopardize the employee's ability to obtain permanent residence and, therefore, to continue uninterrupted employment at the University. If the permanent residence process is delayed too long, the employee's non-immigrant status and resulting work authorization may expire before the residence process is complete, thus requiring the foreign national to depart the US (Note: Even though time is a factor in filing permanent residence cases, all the University's policies related to performance standards as articulated in the Faculty Handbook must always be followed.)

4.9 When contemplating an offer of a tenure or tenure-track position to an individual who is not independently work authorized, it is important to understand that many such individuals might expect that the employer will sponsor them for permanent residence within a reasonable period of time after they begin employment. Therefore, at the time of hire, in order to avoid future misunderstandings, and to protect the University from any claims, which may be made by the prospective employee, the hiring department should:

1. Discuss this matter in detail with the potential employee; and
2. Contact OIED's Director of International Student and Scholar Services and Outreach in advance of making any verbal or written agreements with the prospective employee in order to avoid any misrepresentation of University policy.

4.9.1 Any agreement entered into by the hiring department on behalf of the University should take into consideration University policies regarding the sponsorship for permanent residence and Academic Affairs/Human Resources policies

4.9.2 Under no circumstances should the hiring department make any guarantee of sponsorship for permanent residence to the employee. It is impossible for any employer to guarantee that its efforts to secure immigration service approval for immigrant status will be successful, as there are many circumstances that might thwart the University's efforts, such as the employee's personal background and/or previous immigration history. Therefore, the hiring department can only agree for the University to consider sponsoring the employee for permanent residence.

5 Additional References

6 Authority

[UNC Policy Manual, The Code, Section 502](#)

7 Contact Information

Director of International Student and Scholar Services and Outreach
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8 Original Effective Date

September 27, 2017

9 Revision Dates