

# STOCKTON UNIVERSITY



## PROCEDURE

### Sponsorship of Foreign Nationals

Procedure Administrator: Office of General Counsel

Authority:

Effective Date: May 26, 2020

Index Cross-References: Policy VI-10.2

Procedure File Number: 6103

Approved By: Dr. Harvey Kesselman, President

#### I. PURPOSE

This procedure governs the sponsorship of individuals who are not United States citizens for employment by Stockton University.

#### II. DEFINITIONS

- A. Foreign National: an individual who is a citizen of any country other than the United States.
- B. Nonimmigrant Visa Status: a temporary immigration status of limited scope and duration that allows a Foreign National to work in the United States on behalf of the University in a specific position; includes H-1B status, TN status, and O-1 status, among others.
- C. Lawful Permanent Residence: an immigration status which confers the right to work and live in the United States on a permanent basis, also known as a "green card."

#### III. PROCEDURE

##### A. CONFIRMATION OF EMPLOYMENT AUTHORIZATION

As required by federal law, all individuals hired by the University, whether U.S. or foreign-born and without limitation or discrimination, must complete and sign the United States Citizenship and Immigration Service Form I-9, the Employment Eligibility Verification, and present acceptable original documents as required by the Form I-9 to establish identity and eligibility to work in the United States.

##### B. UNIVERSITY SUPPORT FOR NONIMMIGRANT VISA FILINGS

The determination of whether a Foreign National is authorized to begin employment (or will need immigration sponsorship) will be made prior to an offer of employment. If the Office of Human Resources determines that such authorization is required, the Divisional Executive who is hiring the Foreign National shall provide written notice to the Office of Human Resources and the

Office of General Counsel to approve and fund University sponsorship for the necessary Nonimmigrant Visa. The University may not need to sponsor a Foreign National in certain circumstances such as when a Foreign National has a valid Employment Authorization Document that does not require employer sponsorship.

The University will either directly or through designated and approved legal counsel engaged by the University, prepare and file a Nonimmigrant Visa Petition to obtain appropriate work authorization. It is the responsibility of the Foreign National to fully cooperate with this process by providing to the University or legal counsel all requested documents within a reasonable time.

The University reserves the right to withdraw an offer of employment if the Foreign National intentionally or unreasonably delays providing required documentation to process a Nonimmigrant Visa Petition. If the Foreign National is not in valid immigration status at the time of filing, has concealed or misrepresented any aspect of the individual's immigration or work history, or is inadmissible or removable under federal immigration law, then the University reserves the right to withhold sponsorship or support for the Foreign National and/or to request the withdrawal of any pending Nonimmigrant Visa Petition or the revocation of any approved Petition and withdraw the offer of employment.

#### C. INFORMATION ABOUT H-1B VISA

H-1B visas are one of the most common Nonimmigrant Visa classifications used in the hiring of Foreign Nationals. Foreign Nationals who are classified as professionals, i.e. persons working in positions that require at least a bachelor's degree or higher in a specialized field, can be eligible for H-1B status. H-1B status is a temporary, non-immigrant classification that is employer specific, so a person in H-1B status is authorized to work only for the petitioning employer.

The H-1B process must be initiated prior to the date the Foreign National is expected to begin work in H-1B status. Approval of H-1B immigration status (in the form of a hard copy I-797 Approval Notice from United States Citizenship and Immigration Services ("USCIS")) must be obtained by the University before the individual can be placed on the University's payroll and begin work unless the individual possesses an immigration status that allows employment while the H-1B petition is pending.

In general, Foreign Nationals can be granted up to six years (two cycles of three years) of H-1B status, although this period may be extended under certain circumstances.

#### D. EXTENSIONS AND RENEWALS OF NONIMMIGRANT VISA STATUS

Some Foreign Nationals in Nonimmigrant Visa Status may require extensions of their nonimmigrant status during employment with the University. In order to ensure the timely filing of an extension, the University will maintain a record reflecting the nonimmigrant status of University employees who are Foreign Nationals. The Office of General Counsel will provide written notice of the expiration of any University-sponsored immigration status to the Divisional Executive not less than seven months prior to such expiration date. The

Divisional Executive shall determine whether to extend the nonimmigrant status of the Foreign National employee and, not less than six months prior to the expiration date, shall provide written notice to the Office of Human Resources and the Office of General Counsel, to file an extension of the nonimmigrant status for such employee.

#### E. UNIVERSITY-SPONSORED APPLICATIONS FOR LAWFUL PERMANENT RESIDENCE (“GREEN CARD”)

The University will consider the sponsorship of Lawful Permanent Residence (“LPR”) for full-time, tenure-track, and tenured faculty, and full-time permanent staff. Employees are eligible for University sponsorship of LPR after their first-year performance review. Decisions to provide University support to faculty for an employer-sponsored permanent residence shall be made by the Office of the Provost, in consultation with the appropriate School Dean, on a case-by-case basis. Decisions to provide University support to staff for an employer-sponsored permanent residence shall be made by the employee’s Divisional Executive on a case-by-case basis. The University shall not initiate the process to sponsor any Foreign National employee for LPR unless the Divisional Executive provides written notice to the Office of Human Resources and the Office of General Counsel.

The decision to request University sponsorship of a Foreign National for LPR will be made by the Divisional Executive. Once this decision has been made, the Divisional Executive shall submit the Sponsorship Form to the Office of General Counsel and the Office of Human Resources. In making such request, factors to consider shall include: (i) the program or activity in which the individual is involved; (ii) how the individual is needed as an integral part or as an essential component of the department or activity; and (iii) what current and future benefit the individual brings to the University. Such requests shall be treated as recommendations only and are not binding on the University.

The two most frequently used categories for LPR sponsorship by the University are EB-2 Labor Certification and EB-1 Outstanding Professor or Researcher (OPR).

- EB-2 Labor Certification: The University uses the EB-2 advanced degree professional category for tenure-track and tenured faculty and some staff positions that require an advanced degree. This category first requires filing a Labor Certification Application (“PERM”) with the United States Department of Labor. This category is dependent on approval of the PERM by Department of Labor.
- EB-1 Outstanding Professor or Researcher: The EB-1 category is reserved for established and outstanding faculty and researchers. This category requires filing only with USCIS.

#### F. REFERRAL TO OUTSIDE IMMIGRATION COUNSEL

If the University decides to sponsor a Foreign National for Nonimmigrant Visa Status or LPR or to extend an existing Nonimmigrant Visa Status, then the matter will be referred to the University’s designated and approved outside legal counsel specializing in United States immigration law. The Office of General

Counsel will coordinate with outside legal counsel on the preparation of applications and documentation for University sponsorship.

## G. ATTORNEYS' FEES AND COSTS RELATING TO IMMIGRATION-RELATED FILINGS

### i. Nonimmigrant Visa Categories

The University will pay reasonable attorneys' fees as well as filing fees in support of an H-1B visa petition. The Division making the decision to hire a Foreign National shall be responsible for all costs and expenses associated with the preparation and filing of a Petition for Nonimmigrant Visa and any extensions of nonimmigrant status.

If the Foreign National is not eligible for an H-1B visa but qualifies for another temporary (nonimmigrant) visa category, the University will pay reasonable attorneys' fees and filing fees for the other nonimmigrant visa application (including, for example, TN, O-1, etc.) in an amount not to exceed the current attorneys' fees and filing fees required for an H-1B petition. Any fees in excess of that amount must be paid by the Foreign National.

### ii. Lawful Permanent Residence

As required by federal law, the attorneys' fees and costs directly associated with the filing of PERM as part of the LPR process shall be paid by the University, and the Foreign National shall not be required to pay any part of such fees or costs, either directly or through reimbursement. The Division employing a Foreign National shall be responsible for the costs incurred by the University associated with the filing of PERM as part of the LPR process.

If a Foreign National pursues LPR through a method other than PERM (e.g., EB-1 Outstanding Professor or Researcher), the University will pay attorneys' fees in an amount not to exceed the current attorneys' fees required for a PERM application. The University will determine on a case-by-case basis whether to pay any fees or costs in excess of that amount. Any legal fees or costs that the University determines not to pay shall be the responsibility of the Foreign National.

The University will determine on a case-by-case basis whether to pay the filing and legal fees associated with the I-140 immigrant petitions and the I-485 adjustment of status applications. Any legal fees or costs that the University determines not to pay shall be the responsibility of the Foreign National.

For Foreign Nationals who pursue LPR through the PERM process and later become eligible for the Outstanding Research or Extraordinary Ability Immigrant Petition, the University will consider paying the attorneys' and costs associated with that application, on a case-by-case basis.

### iii. Premium Processing

In some instances, the use of the USCIS's premium processing service can be beneficial for processing both LPR and H-1B visas. If the premium processing is for the benefit of the University, then the University may cover this fee. However, if the use of the premium processing service is for the benefit of the Foreign National, then the Foreign National must pay this fee.

When premium processing is for the benefit of the University, the Division that employs, or plans to employ, the Foreign National shall be responsible for all costs and expenses associated with the use of any such USCIS premium processing service. The Divisional Executive shall provide notice of approval of premium processing to the Office of General Counsel and the Office of Human Resources prior to initiation of the process.

### iv. Visa Stamp Application

The University will only cover expenses associated with the visa stamp application process at a United States Embassy or Consulate General for University-sponsored travel outside the United States.

### v. Derivative Family Members

The University will not cover the legal fees or expenses associated with the preparation and submission of any applications for derivative family members to obtain Nonimmigrant or Immigrant Visa status. However, the Foreign National is permitted to engage the services of the University's designated and approved immigration counsel.

## H. AUTHORIZED SIGNATURES

Only authorized representatives of the University, including the Divisional Executives or the Office of General Counsel are authorized to sign immigrant or nonimmigrant petitions on behalf of the University to ensure compliance with federal law.

## I. EMPLOYEE RESPONSIBILITIES

Employees shall be responsible for maintaining appropriate visa status to be authorized to work at the University and shall pay all fees and expenses not paid by the University. Employees shall inform the Office of General Counsel and the Office of Human Resources within 180 days of any potential lapse of their immigrant or nonimmigrant status. The employee shall provide all necessary information required for submission of the application for Nonimmigrant Visa or LPR upon any request by the University or the University's designated and approved outside legal counsel.

## J. IMMIGRATION SPONSORSHIP DOES NOT SUPERSEDE UNIVERSITY'S EMPLOYMENT POLICY OR PRACTICES

The University's decision to sponsor any Foreign National for a Nonimmigrant Visa classification or for LPR is not a contract of employment, and does not supersede any of the University's agreements, policies, or procedures relating to employment. In addition, any statements made by the University or any of its faculty or staff in support of any immigration-related application or petition shall not supersede or be included in or be a part of any employment-related evaluation, including evaluations for tenure, promotions, pay increases, or new appointments.

K. LIQUIDATED DAMAGES

The University expends considerable financial and personnel resources to obtain authorization to employ Foreign Nationals. Therefore, if a Foreign National separates from the University voluntarily within the first year of acquiring Nonimmigrant Visa Status or Lawful Permanent Residence, the University may seek to recover liquidated damages in an amount equal to the legal fees and other expenses incurred by the University, in accordance with federal law.

Review History:

	Date
Procedure Administrator	5/5/2020
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