

BUFFALO STATE COLLEGE

DIRECTORY OF POLICY STATEMENTS

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Subject: Policy Concerning U.S. Immigration Status

The policy is intended to provide guidance to all state-operated campuses of the State University of New York ("the University") in matters relating to obtaining or renewing a U.S. non-immigrant or immigrant status based on employment with the University. This guidance does not cover verification of employment eligibility (I-9 Procedure) the policy for which is addressed in Memorandum to Presidents No. 87-2, dated April 20, 1987.

The University is authorized to prepare and file petitions or applications or correspondence with the Department of Homeland Security (DHS) or the Department of State (DOS) in its role as employer. Applications by a university employee or by an employee's dependents are the responsibility of the employee as it is the employee's responsibility to ensure his or her own compliance and the compliance of his or her dependents with DHS and DOS regulations at all times.

The University's Office of University Counsel is the only unit within the University authorized to hire outside counsel on behalf of the State University. Therefore, state-operated campuses or academic departments within the campuses are not permitted to engage outside counsel for any immigration matter, nor is a foreign national employment candidate or current employee permitted to hire their own outside counsel **to represent the University** in connection with processing immigration matters. In order to provide specialized assistance to University campuses, standardize policy and procedure in this area, assure University compliance with recordkeeping and other immigration law requirements, and to assure quality representation and cost efficiency in immigration matters, the University has retained immigration specialist counsel to advise and assist the University in its petitions and applications. This counsel is retained by and responsible to University Counsel and provides assistance to University departments as authorized by the Office of University Counsel. Access to use of this specialized counsel requires Office of University Counsel authorization. The cost for use of outside immigration counsel will be borne by the campus in question and, therefore, also must be authorized by appropriate campus officials.

The University does provide advice and assistance to international students and scholars through those officials who are Designated School Officials or Responsible or Alternate Responsible Officers of the University's F-1 Student and J-1 Exchange Visitor programs as authorized by the DHS and DOS. A number of campuses also provide assistance to departments through International Student and Scholar Services offices in the preparation of employment-based petitions and applications for nonimmigrant categories such as the H-1B Temporary Worker, O-1 Extraordinary Ability and the TN-1 NAFTA categories. These offices also provide advice and prepare petitions and applications for departments at their respective campuses relative to the process of obtaining permanent residence based on University employment. Campuses which do not maintain such an office may request legal assistance through the Office of University Counsel.

I. Temporary Work Authorization

The University, through its state-operated campuses, will provide employment sponsorship and related financial support for standard processing, government filing fees and certain costs associated with obtaining temporary work authorization or status and necessary extensions or amendments for certain employees. Positions for which such sponsorship will be provided include:

- Researchers 1
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- Physicians with full-time academic appointments
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- Nurses, Health Professionals i.e. Physical Therapists, etc. who meet State educational and licensure requirements

Sponsorship and support will not be provided for positions that do not require the minimum of a bachelor's degree.

Exceptions to this policy will be made on a case-by-case basis, based on a clear University business need, only by the campus's chief business or academic officer.

The University does not cover travel costs or application fees to obtain visa stamps unless hiring department head approval is obtained prior to traveling. The employee should usually coordinate personal travel with obtaining a visa stamp at a U.S. Consulate abroad.

II. Permanent Residency

The University, through its campuses, will support labor certification and/or immigrant petition processing (including the costs thereof) on behalf of employees who hold a "permanent" position. Permanent positions include tenured or tenure-track teaching or research positions and other positions which, although not tenure-track or tenured, are intended to continue for a minimum period of three years, dependent upon employee performance and availability of funding. Temporary positions, such as temporary post-doctoral research appointments do not qualify as "permanent" for this purpose. Although the University may consider a position "permanent" for immigration processing purposes, this does not change the University's standard terms of employment as expressed in state statutes, regulations, collective bargaining agreements and the *Policies of the Board of Trustees*.

An employee who is a teaching faculty member may begin discussions with his or her academic department regarding sponsorship for permanent residency status, i.e., a green card, immediately upon commencing employment with the University. The department has full discretion to delay starting this process based on either the employee's performance or other factors such as funding issues. Of course, any hiring or renewal decision or commitment must be made in conformity with usual campus procedures with approval by appropriate administrators.

Permanent residency cases for teaching faculty who were hired through competitive recruitment will normally be processed under the "special handling" labor certification category if at all possible so departments should note that an application to initiate this process must be filed with the New York State workforce agency within 18 months of the date the faculty member was selected at the end of the search. This procedure will save the department considerable time, effort and cost.

Another option is to file in the "outstanding professor/researcher" category once the faculty member qualifies. Generally, junior faculty with recent Ph.D.s must wait until they have 3 years of qualifying experience.

Employees should expect variance in government processing delays and plan accordingly with respect to travel and their job duties. The University cannot guarantee that a case will be filed in any specific category or by any specific time period or that the DHS or DOS will approve a particular application or petition or issue a visa. In the event of difficulties in such a matter, the University's immigration specialist counsel should be consulted. No contact should be initiated with any political figure, such as members of Congress, seeking assistance on behalf of the University without first consulting with the Office of University Counsel. Of course, the employee may seek assistance on her or his own behalf.

The University and the employee will share the cost of obtaining permanent residency status as follows:

With hiring department and/or campus approval and availability of department/campus funds, the University may elect, on a case-by-case basis, to cover legal and government filing fees for the following applications and/or petitions:

- Application for labor certification (including the cost of required advertisements); and,
- An employment-based immigrant petition;
- The I-485 Adjustment of Status (AOS) or consular processing for an immigrant visa for the employee and the employee's dependents.

The employee will be fully responsible for the costs related to:

- All medical examinations, photographs, fingerprints, vaccinations, obtaining biographic documents and translations for employee and the employee's dependents.
- The costs for obtaining employment or travel authorization for the employee's dependents.
- Travel costs to obtain a nonimmigrant or immigrant visa at a U.S. Consulate abroad.

The University will not pay for non-employment-related sponsorships, such as in the case of marriage-based petitions.

III. Related Issues

Following is a brief description of some related general immigration guidelines that have been adopted to efficiently and effectively serve the University's business relating to immigration issues:

- Departments should notify their campus International Services office and/or the campus Human Resources office, as appropriate, prior to extending an offer to a foreign national candidate for purposes of discussing appropriate language to be included in the offer letter and obtaining a work-based visa employment-based immigration status on behalf of the foreign national candidate;
- Departments must notify their campus International Services office and/or the campus Human Resources office, as appropriate, if a material change in employment occurs involving a foreign national employee. An example of material change could include a significant change in the daily responsibilities of the employee, rank, compensation or department or termination of employment.
- Immigration law requires that if a foreign national in H-1B status should involuntarily terminate employment with the University prior to the end of the validity of the H-1B petition, the University will be liable for reasonable costs of return transportation to the last place of foreign residence before the end of the period of authorized stay for the foreign national and that appropriate government agencies (US DOL and USCIS) must be notified of such a termination. Of course, appropriate University termination procedures also should be followed.
- All external costs incurred relating to immigration matters paid by the University/campus are charged back to the appropriate department budget.

¹Research Foundation of State University of New York (RF) employees are not covered by this policy. The RF has its own policy on immigration support. For information on immigration matters pertaining to Research Foundation employees, the RF Office of Employee Services should be contacted.