HSC OP: 52.13, Hiring and Immigration Sponsorship of Foreign Nationals

PURPOSE: 1. Define policies relating to the sponsorship of a foreign national employee for both employment-based nonimmigrant and permanent residency petitions;
2. Ensure excellence in the quality of services provided to Texas Tech University Health Sciences Center (TTUHSC) and foreign national employees;
3. Ensure consistency and accuracy in the representations made on behalf of TTUHSC to federal agencies;
4. Ensure compliance with TTUHSC’s employment policies and practices;
5. Provide a reliable means of collecting and storing data on TTUHSC’s foreign national employees, as required by law and for TTUHSC’s own data collection needs.

REVIEW: This HSC OP will be reviewed by March 1 of each even-numbered year (ENY) by the Managing Director, Immigration Compliance and Services with recommendations for revisions forwarded to the Vice President of Institutional Compliance.

POLICY:

1. Definitions.
   a. Employment-Based Permanent Residence Petition: Petitions filed with USCIS to secure permanent residence for a foreign national employee. Petitions are usually filed by a US employer but may be self-filed by a qualified foreign national. Petitions filed by a US employer require evidence of a full-time offer of employment for an indefinite duration (i.e. employment relationship has no fixed end date).

   Employment-based Permanent Residence Petitions Sponsored by TTUHSC:
   i. EB-1 Extraordinary Ability
   ii. EB-1 Outstanding Professor/Researcher
   iii. EB-2 Advanced Degree Professional and Advanced Degree Professional Requesting a National Interest Waiver (NIW)
   iv. EB-3 Professionals/Skilled Workers, including Schedule A petitions for Registered Nurses and Physical Therapists

   b. Foreign National. A person who was born outside the jurisdiction of the United States, who does not have US citizenship.

   c. ICE. Immigration & Customs Enforcement, (a unit of the US Department of Homeland Security).

   d. Immigration Compliance and Services in the Office of Institutional Compliance (ICS) is responsible for all employer-based nonimmigrant and immigrant visa filings at TTUHSC. ICS is also responsible for TTUHSC’s Exchange Visitor program. Detailed information about TTUHSC’s immigration documents, processes and other immigration-related topics is available on the ICS website.

   e. Lawful Permanent Resident. A foreign national who is lawfully admitted into the USA as an immigrant. Other common terms include permanent resident and green card holder.
f. **Nonimmigrant**: A foreign national who does not intend to remain permanently in the USA and can demonstrate intent to return to his or her home country after a temporary period of time in the USA.

Nonimmigrant Petitions Currently Sponsored by TTUHSC:

i. **H-1B**: foreign national employee working in a "specialty occupation"

ii. **E-3**: foreign national who is a citizen of Australia working in the USA in a "specialty occupation"

iii. **J-1**: exchange visitors (discussed in detail in HSC OP 52.14)

iv. **TN**: citizen of Mexico or Canada working in the USA in certain designated professional occupations as noted in the United States-Mexico-Canada Agreement (USMCA).

v. **O-1**: foreign national employees who can demonstrate extraordinary ability in the sciences, arts, business or education by sustained national or international acclaim and are coming to the U.S. to continue work in the area of extraordinary ability.

g. **OPT**: Optional Practical Training. Work authorization given only to foreign students in F-1 or M-1 visa status that allows them to engage in employment (practical training) directly related to their major area of study. OPT is given for a maximum of 12 months and some students may have less than 12 months.

h. **OPT-STEM Extension**: A 24-month extension of work authorization given to certain F-1 students who have completed a period of OPT after receiving their degree. Only F-1 students who have completed a degree in specifically listed science, technology, engineering, or mathematics (STEM) fields qualify for OPT-STEM. The list of specific STEM degree fields is maintained by ICE.


2. **Foreign National Employees with Employment Authorization Documents (EAD).**

a. EAD cards are issued to foreign nationals in various visa categories. Persons with a valid, unexpired EAD card may work in the USA under the conditions that the EAD was issued. Foreign national employees with EAD do not require TTUHSC sponsorship but may require sponsorship to allow for continued employment after the EAD expires. If institution sponsorship is required in the future, ICS should be contacted six months before the EAD card expires so that an immigration sponsorship assessment can be made.

b. Foreign national employees, who have an EAD card due to an approval of OPT or OPT-STEM must utilize all available OPT and OPT-STEM employment periods of time before receiving institutional sponsorship for an employment visa. ICS will consider a case-by-case suspension of this requirement only if extraordinary circumstances are presented.

3. **Sponsorship for Nonimmigrant Visa or Visa Status.**

a. To ensure institution-wide compliance, Immigration Compliance and Services (ICS) has been designated as the only representative to file nonimmigrant petitions on behalf of the institution. Private legal counsel may not file these petitions on behalf of the institution and cannot represent TTUHSC on any immigration filing.

b. Sponsorship of a nonimmigrant petition is contingent upon the prospective foreign national employee being able to provide the necessary documents and evidence needed for the specific visa category. ICS will maintain a list of documents that must be provided for each nonimmigrant visa category and will provide that information to the hiring department and prospective foreign national employee. A nonimmigrant petition will not
be filed for a foreign national who does not provide all of the documents and evidence required by USCIS to approve the visa petition.

c. Prior to extending an offer of employment to a foreign national in need of immigration sponsorship to work in the USA, the hiring department must contact ICS to determine if sponsorship is possible. ICS will review the immigration history and current status (if any) of the foreign national to identify whether sponsorship will be successful and determine the best visa category to utilize. ICS will advise the hiring department after the immigration review is completed.

4. Sponsorship for Permanent Residence.

a. To ensure institution-wide compliance, Immigration Compliance and Services (ICS) is the only representative to file employment-based permanent residence petitions on behalf of the institution. Private legal counsel may not file these petitions on behalf of the institution and cannot represent TTUHSC on any immigration filing.

b. Prior to commencing an employment-based permanent residence petition for a foreign national employee, ICS will confirm the employee’s eligibility for permanent residence and determine the most appropriate process to follow. Any and all conflicts with the current nonimmigrant visa status will be addressed and resolved.

c. At a certain stage in the permanent residence process, the foreign national employee and dependent family members will file their personal applications for permanent residence status. TTUHSC does not serve as legal representative to the foreign national employee or the qualified dependent family members with regards to their personal immigration applications.

d. With the exception of the conditions mentioned below in subsection “e”, no petition for permanent residence will be initiated by TTUHSC until the foreign national has successfully completed at least eighteen (18) consecutive months of full-time service. TTUHSC service during a full-time program of study at any academic level, does not count towards the 18 months of service requirement.

e. The 18-month service requirement will be waived in extraordinary circumstances which may include, but are not limited to, the following situations:

i. Foreign nationals transferring to TTUHSC with less than 30 months (or 2.5 years) of time remaining on their current H-1B visa status cycle as of the date employment will commence at TTUHSC;

ii. Foreign nationals with a child in dependent nonimmigrant visa status who will reach the age of 21 in less than 30 months (or 2.5 years) as of the date employment will commence at TTUHSC;

iii. Foreign nationals holding faculty positions and/or with teaching responsibilities. The permanent residence process will begin for teaching faculty within twelve (12) months of the date of the first job offer letter received from TTUHSC. The Permanent Labor Certification Special Handling (PERM-SH) process will be used for the employment-based permanent residence filing unless clear evidence indicates that an alternative process should be used.
iv. Please note the stages of the PERM-SH process:

1. Twelve (12) months from date of offer letter, the Department and foreign national received questionnaires to begin the process. ICS will begin the pre-filing certification and posting requirements after received fully completed questionnaires from the department and foreign national.

2. Eighteen (18) months from the date of the job offer letter, ICS will submit the PERM-SH application. The PERM-SH application will be timely submitted, so that it is filed no later than the 18-month filing deadline. However, ICS provides no specific date for submission, or guarantees that the application will be submitted on any specific date prior to the 18-month deadline date.

3. The PERM-SH initiation date may be modified as immigration-mandated, pre-filing certification processing times change, and the process may begin after Month 12, if circumstances permit.

f. A foreign national employee may elect to seek permanent residence status through self-petition. No self-petition for permanent residence may be signed by a TTUHSC employee as sponsor of the petition. A TTUHSC employee may provide a letter of recommendation (peer support letter) but cannot indicate or state that TTUHSC is sponsoring the self-petition for permanent residence. Any and all documents sent by outside attorneys with a request for signature, must be forwarded to ICS for review, prior to signing, to ensure that the documents conform to institutional policy.

g. ICS will ensure that the foreign national maintains valid nonimmigrant visa status during the permanent residence process to every extent possible. If circumstances do not allow for an extension of the nonimmigrant visa status, this information will be clearly communicated to the foreign national and the hiring department. If nonimmigrant visa status cannot be maintained, the foreign national employee will need to have a valid, unexpired EAD card in order to continue working at TTUHSC.

5. Employment Verification and Reverification.

All foreign national employees are required to ensure that employment-based immigration documents are renewed and extended in a timely fashion to allow for timely updating of Human Resources, Payroll and International Tax records. Failure to provide timely evidence of employment authorization may result in disciplinary action as necessary and appropriate based on the circumstances.

6. Procedures.

ICS questionnaires, forms and guidance are available on the TTUHSC Office of Institutional Compliance website at Immigration Compliance and Services.

7. Right to Change Policy.

TTUHSC reserves the right to interpret, change, modify, amend, or rescind this policy in whole or in part at any time without the consent of employees.