



# UNC Charlotte Employment-Based Immigration Sponsorship Guidance

## Background and Introduction

The employment of international faculty and researchers is critical to fulfilling UNC Charlotte's responsibility to provide its students with the knowledge and experiences necessary to be constructive citizens of North Carolina and to succeed in our diverse world. By engaging in employment-based immigration sponsorship to support a qualified employee's authorization to work, UNC Charlotte is able to recruit and hire gifted and skilled scholars and academic professionals who meet our institutional mission and plan for the future.

We recognize that nonimmigrant and immigrant sponsorship requires a substantial commitment of University resources. Further, it is understood that the University is not obligated to provide nonimmigrant or immigrant ("green card") sponsorship to any candidate for a position or an existing employee.

UNC Charlotte employs nonimmigrants in accordance with applicable federal laws and regulations as well as UNC Charlotte policies and practice. Nonimmigrants are foreign nationals who are admitted to the U.S. temporarily for a specific purpose and for a specific period of time. Such nonimmigrants are permitted to work for UNC Charlotte only upon authorization from the U.S. Citizenship and Immigration Services (USCIS) or U.S. Department of State (DOS). In the context of this guidance, nonimmigrants are those individuals who require the University to provide sponsorship in order to be authorized to engage in employment with UNC Charlotte. Such nonimmigrant sponsorship includes, but is not limited to, visa categories J-1, E-3, H-1B, H1-B1, TN, and O-1.

In order to ensure compliance with the complex federal laws and regulations and to avoid institutional liability for noncompliance, these guidelines have been developed by the International Student and Scholar Office (ISSO) with support from the Office of Legal Affairs, the Office of the Provost, and Human Resources.



## General Stipulations

- A. The International Student and Scholar Office (ISSO) is solely responsible for advising academic and other departments on all pertinent issues relating to employment-based nonimmigrant and immigrant sponsorship of foreign nationals. The ISSO staff members are the only individuals authorized by the University to serve as signatories on behalf of the University with regard to immigration-related applications, petitions, and processes entailing the University's sponsorship.
- B. Nonimmigrant and immigrant sponsorship is limited strictly to situations in which there is an employer-employee relationship between the foreign national and UNC Charlotte, meaning no contract or third-party employment.
- C. No UNC Charlotte employee shall make any guarantee as to the success of a given employment-based immigration application, petition, and/or process. The ISSO shall put forth reasonable efforts to achieve positive outcomes.
- D. The department employing or seeking to employ a foreign national ("hiring department") and the sponsored foreign national shall fully and timely cooperate with the ISSO staff, specifically with regard to any requests for documentation, information, or the like. The failure to meet this obligation may result in a decision to terminate or suspend the sponsorship process.

## General Limitations and Obligations: International Employment

- A. UNC Charlotte retains the right to determine whether to sponsor, impose limitations on sponsorship, or terminate sponsorship.
- B. The ISSO determines the most appropriate visa category based on the institution's classification of the position and any applicable immigration-based circumstances.
- C. To limit institutional liability and for purposes of fiscal responsibility, the institution shall only support the following employment-based nonimmigrant categories:



Visa Type	Intended Positions	Length of Sponsorship
J-1 Exchange Visitor	Temporary research or teaching (ex. Postdoctoral fellow)	3 weeks - 5 years, depending on category
H-1B Specialty Occupation	More permanent teaching and research (ex. tenure-track)	1-6 years (3 years initially and one 3-year extension)
O-1 Extraordinary Ability	More permanent teaching and research (ex. tenure-track)	Not recommended to exceed 4 years (3 years initially and one 1-year extension)
E-3 Australian Special Occupation	Temporary employment in a 'specialty occupation' requiring theoretical and practical application of highly specialized knowledge	Not recommended to exceed 4 years (2 years initially and one 2-year extension)
TN (Trade NAFTA) only citizens of Canada or Mexico with qualifying professions	Temporary research, teaching, or other	Not recommended to exceed 6 years (renewed annually at the port of entry or via individual petition)

Any employment-based nonimmigrant sponsorship category *not* listed above may only be facilitated with the explicit authorization and capabilities of the ISSO. Additionally, extensions of certain visa categories are subject to ISSO discretion.

- D. New hires eligible to apply for F-1 Optional Practical Training (OPT) are strongly recommended to do so. This employment transition is beneficial to the employee and the institution as it allows the appropriate amount of processing time for any necessary immigration petitions.
- E. Employees on F-1 OPT who are in a qualifying STEM field are eligible to apply for the OPT STEM Extension and are strongly recommended to do so. While the OPT STEM extension requires that the employer agree to a training plan and the obligations therein, this is not regarded as employer sponsorship for purposes of this policy. Only immediate academic supervisors and Human Resources staff are authorized to sign on behalf of UNC Charlotte the STEM OPT training plan (known as form I-983) .
- F. To limit institutional liability and for purposes of fiscal responsibility, the institution shall only support employment-based immigration sponsorship (ex. H-1B, O-1) for full-time



permanently funded teaching and research positions of at least one year (minimum) in duration. USCIS requires a bachelor's degree or higher in a specific field or related fields as the minimum educational requirement, however most qualifying positions will require an advanced degree.

- a. On occasion, *some* professional staff positions in specialized fields without either teaching or research components *may* meet minimum federal requirements and thus warrant consideration for institutional sponsorship. Departments with compelling rationale for hiring an international employee for a permanently funded administrative professional position must submit a written proposal to the ISSO that will require consultation with and approval from Academic Affairs and other relevant units. It should be noted that within higher education, administrative positions have lower USCIS approval rates than teaching and research positions.
- b. Research positions with no teaching responsibilities, such as Postdoctoral Fellow, may be employed via the J-1 Exchange Visitor category or F-1 Optional Practical Training, as these positions are more in line with the purpose of these visa categories.

G. Individuals subject to the two-year, foreign residence requirement under Section 212(e) of the Immigration and Nationality Act, based on current or previous J-1 status in the U.S., may be prevented from obtaining sponsorship by UNC Charlotte that provides a pathway to H-1B status and/or permanent residence unless and until they either waive or fulfill this requirement as set forth by the U.S. Department of State. The ISSO does not assist with such waivers.

H. Any visit by federal officials or representatives to the University concerning immigration-related matters is to be reported to the Office of Legal Affairs, the International Student and Scholar Office and the Human Resources office within 12 hours of the visit. Absent exigent and rare circumstances, any written response to a federal official or representative must be provided in close coordination with the ISSO.

## Hiring Department Responsibilities for Immigration Sponsorship

- A. Departments are responsible for consulting the ISSO website, [Recruit and Hire International Employees](#) and following the necessary steps for hiring internationals. Please consult with this website for each hiring process to ensure



you are complying with any Federal impacts to H-1B visa sponsorship (such as restrictions, timing delays, or fees).

- B. Once an offer of employment has been extended, the hiring department (Business Officer or Business Services Coordinator) should submit a sponsorship request through the [ISSO Portal](#) to initiate the sponsorship process.
- C. The request for employment sponsorship of a new employee and supporting documentation should be submitted to the ISSO 4-6 months prior to the prospective employee's targeted start date or date of continued employment.
- D. H-1B status can be awarded for a total of 6 years, but in increments of no longer than 3 years. Any time spent abroad during these six years can be reclaimed and added to the total if the absences from the U.S. can be documented. Extensions past the sixth year are only possible if the employee is the beneficiary of an approved I-140 immigrant petition. Time that an employee has spent in H-1B status at another U.S. employer deducts from the 6 years of eligibility.

The beginning and end dates of H-1B employment should be an accurate reflection of the length of funding available for the position and the amount of time that the employee is expected to fill the position, however the H-1B application dates do not need to match the dates on the employee's contract. Furthermore, the employee is not eligible to start employment prior to the start date on the approved H-1B petition.

The UNC Charlotte hiring department or unit is responsible for the following:

- a. Paying the required wage throughout the entire duration of the employment. The required wage is the wage that employees who are in a similar occupation in a given geographic area are paid. This wage is based on external wage data, provided by the Department of Labor, and takes into account the requirements for the position vis-à-vis the requirements that the Department of Labor considers typical for the occupation.
- b. All [USCIS filing fees](#), including mailing expenses associated with immigration-related petitions and applications for which UNC Charlotte serves as the applicant or petitioner.

The ISSO strongly recommends the use of premium processing service to ensure adjudication within 15 business days as well as improved customer



service. Without premium processing, petitions can take up to 6 months to be adjudicated.

- E. The prospective employee is responsible for the following:
  - a. Any USCIS filing fees associated with adding H-4 dependents (spouse and or child under age 21).
  - b. The cost of premium processing if it is not deemed as a business need by the hiring department, i.e. not work-related.
- F. University employees shall not aid or counsel on immigration matters related to the employee's personal interests, his or her dependents, and/or any application for permanent residence (green card).
- G. It is expected that the hiring department will respond to the ISSO's requests for information and documentation in a timely manner.
- H. The hiring department will notify the ISSO prior to making any change in the status, duties, job location (including work-from-home situations), compensation, and/or hours of a sponsored employee.
- I. The hiring department will notify the ISSO prior to any termination of a sponsored employee. In the event that a sponsored employee is to be terminated before the expiration of their sponsored nonimmigrant visa status:
  - a. The ISSO must notify USCIS in writing prior to termination, provide a copy of the letter to the sponsored employee, and retain a copy of that letter.
  - b. Should it be required, the hiring department is responsible for the reasonable cost of return transportation to the employee's home country for employees with H-1 or O-1 status.

## Sponsoring Foreign Nationals for the Immigrant Petition (Leading toward Permanent Residence)

- A. The Immigrant petition (I-140) is not the same as U.S. permanent residence (green card); however, an approved I-140 can allow an individual to apply for a green card. See explanations below for a fuller understanding.
- B. Due to the significant administrative and financial commitment invested into this immigration petition from the hiring department, sponsorship for the pathway to



permanent residence under the categories in paragraphs D and E below must be initiated and fully supported by both the hiring department and the ISSO.

- C. UNC Charlotte will only sponsor the pathway to permanent residence for full-time, permanently funded faculty positions.
  - a. "Permanently funded" is defined by the reasonable expectation that employment will be for the foreseeable future and that it anticipates sufficient funding to continue the employment relationship.
  - b. Qualifying faculty positions are defined by Academic Affairs as tenured/tenure track or some special/non-tenure track faculty classifications with the exception of visiting professor. Positions must be categorized as fulltime appointments.
  - c. Please refer to the [Academic Personnel Procedures Handbook](#) for further information as classifications may change over time.
- D. With regard to faculty providing classroom teaching, the preference is to pursue immigrant sponsorship through the Optional Special Recruitment and Documentation Procedures for College and University Teachers, also known as PERM Special Handling (EB-2), when permissible by law. See [20 CFR Section 616.18](#). This process requires that the hiring resulted from a well-documented competitive recruitment and selection process. The hiring department is responsible for any related costs and USCIS fees. The ISSO will initiate communication with the host department and employee within the first year of hire to explore this pathway to permanent residency.
- E. As an alternative to PERM Special Handling, UNC Charlotte may, in select circumstances, sponsor an employee for classification as an [EB-1 Outstanding Researcher and Professor](#) if they meet the USCIS qualifications. UNC Charlotte shall not file an Outstanding Researcher and Professor petition until such time as the employee has completed at least one year of service at the University.
- F. The green card application (I-485, Application to Register Permanent Residence or Adjust Status) is an extremely complex, expensive, and unpredictable process that is considered a personal application between the employee and USCIS. As such, UNC Charlotte shall not assist the sponsored employee with the preparation of an I-485 application or an application for consular processing of a nonimmigrant or an immigrant visa.



Further, without the express authorization of the ISSO, the institution may not reimburse or pay for any costs or fees associated with the preparation and/or filing of an I-485 application.

## Sponsored Employee Use of Outside Counsel

- A. Neither employees nor host departments are authorized to retain outside immigration counsel to represent the University. However, an employee always may consult with private counsel, if desired, regarding his or her personal interests as distinct from that of the University.
- B. If the sponsored employee or candidate retains private counsel, the University may not reimburse or pay that attorney's fees or any costs.

## Deemed Export Control Requirements

- A. UNC Charlotte utilizes an Export Control process for international hires, by which a University official with knowledge and authority regarding the Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR") attests that a license is not required for the position.
- B. Evidence of the attestation from the authorized University official shall be retained by the University.

## Obligations of the Sponsored Employee

- A. In a timely manner, respond to the University's requests for documentation and/or meetings.
- B. Provide legible and accurate copies of all newly acquired U.S. visa stamps and I-94 arrival/departure records to the ISSO within ten (10) days of re-entry to the U.S.
- C. Accept responsibility for reviewing the accuracy of all newly acquired U.S. visa stamps, I-94 departure records, and passport stamps immediately upon receipt and correcting any inaccuracies.
- D. Notify the U.S. Department of Homeland Security and the International Student and Scholar Office of any change in U.S. address within 10 days of moving.



- E. Ensure maintenance of nonimmigrant status by:
  - a. Maintaining a valid passport;
  - b. Working only for UNC Charlotte and in the position for which the visa status was filed and approved;
  - c. Notifying the ISSO of any changes in work location, position, job duties and/or requirements, work hours, or employment status before those changes are implemented; and
  - d. Ensuring proper maintenance of status as well as for any dependents in the U.S.

## Definitions

**Foreign National:** any prospective faculty or researcher administrator who is not a U.S. citizen or lawful permanent resident (green card holder) who is in the United States on a temporary immigration status

**Nonimmigrant Visa Status:** a temporary immigration status providing permission to a Foreign National to work for the University in a specific position. This includes H-1B status, TN status, O-1 status, and J-1 status, among others

**F-1 (OPT):** recently graduated students who are eligible to work in the United States for up to 1 year in a job that is related to their field of study. Those in STEM fields may be eligible for an additional 2 year extension based on a training plan coordinated by the supervisor.

**J-1:** visiting scholars including professors, researchers, and specialists

**H-1B:** A nonimmigrant classification available to specialty occupation professionals who (a) have been offered a position in a specialty occupation requiring a minimum of a bachelor's degree in a field relevant to the offered position; and (b) who hold the required U.S. or equivalent degree and (if applicable) state licensure.

**TN:** professional occupations; only citizens of Mexico & Canada are eligible

**O-1:** A nonimmigrant classification available to individuals with an extraordinary ability and who have documented achievement in the field of his/her research or work



**Labor Condition Application:** An application filed as part of the H-1B process, also referred to as the LCA

**Labor Certification:** The first step in a three-step process toward obtaining employment-based permanent resident status. For most faculty, "Labor Certification" must be sought through "Special Handling" within 18 months of the faculty member's appointment decision or "selection date". For non-teaching positions, the labor certification requires extensive evidence of unsuccessful recruitment for qualified U.S. workers.

**Permanent Residence or green card holder:** a foreign national who has been granted the permanent resident to live and work in the United States for any employer