

## Handbook of Operating Procedures

### HIRING FOREIGN NATIONALS

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#### A. Purpose

The purpose of this policy is to provide The University of Texas Rio Grande Valley (UTRGV) procedures, that are consistent with federal law, for hiring foreign nationals.

#### B. Persons Affected

This policy applies to all employees who may be involved in the recruitment, hiring or processing of the appointments of faculty and staff who are foreign nationals. The procedures for filling positions that require student status as a condition of employment are established by the Office of International Admissions and Services, the office authorized to grant employment authorization through designated school officials.

#### C. Definitions

Non-immigrant Visa - A visa issued to a person with a permanent residence outside the United States (U.S.) but who wishes to be in the U.S. on a temporary basis. Examples of non-immigrant visa types typically petitioned for by UTRGV for the employment of foreign nationals are H-1B, TN, J-1, O-1, and E-3.

H-1B visa - The US H-1B visa is a non-immigrant visa that allows US employers to hire foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields such as in architecture, engineering, mathematics, science, and medicine. Under the visa, a US employer can hire a foreign worker for up to six years.

TN visa - The non-immigrant North American Free Trade Agreement (NAFTA) TN visa allows citizens of Canada and Mexico to work temporarily in the United States in certain occupations.

J-1 visa - The J-1 visa is a non-immigrant visa category for scholars approved to participate in work, study, and research exchange visitor programs. It should be used to bring someone to the U.S. on a temporary basis to perform a specific research or teaching activity.

O-1 visa - The O-1 temporary worker visa status is designated for individuals of extraordinary ability in the sciences, education, business, arts or athletics and individuals of extraordinary achievement in the motion picture and television industries.

E-3 visa - The E-3 is an attractive alternative to H-1B status for an Australian national who is coming to the U.S. with a spouse who hopes to work in the U.S.

Permanent Immigrant Visa – The visa issued to a person to reside permanently in the U.S.

**D. Policy**

1. In accordance with the Immigration Reform and Control Act (IRCA) and applicable federal regulations, UTRGV will only hire and continue to employ individuals who are authorized to work in the United States.
2. University visa sponsorship for employees is reserved for employees in positions that directly support the teaching and research mission of UTRGV. Job titles eligible for both non-immigrant status and immigrant/permanent resident status are shown in the following table:

**Job Eligibility for nonimmigrant status and Immigrant/Permanent Resident Status\***

<b>Titles</b>	<b>Job Title</b>	<b>Eligible for H-1B</b>	<b>Eligible for Permanent Residency</b>
Academic	Professor	X	X
	Associate Professor	X	X
	Assistant Professor	X	X
	Instructor	X	
	Senior Lecturer	X	
	Lecturer	X	
School of Medicine	Residents and Fellows	X	
	Clinical Professor	X	X
	Clinical Associate Professor	X	X
	Clinical Assistant Professor	X	X
	Clinical Instructor	X	
	Professor in Practice	X	
	Associate Professor in Practice	X	
Research Titles	Professor of Research	X	
	Associate Professor of Research	X	
	Research Scientist	X	
	Research Associate	X	
	Research Assistant	X	
	Postdoctoral Fellow	X	

\*Any requests for exceptions for individuals who do not hold these titles must be made in writing to the hiring official's chair, dean and the Provost/Executive Vice President for Academic Affairs.

3. Permanent resident petitions (“green card”) for foreign nationals may be petitioned for under the categories of Outstanding Professor/Researcher or through Special Handling Labor Certification. Generally, UTRGV will not file a petition under the standard labor certification application process.
4. UTRGV will only support petitions that are in the institution’s best interest and that it or its duly authorized agents have prepared. The Office of Human Resources is responsible for the filing of temporary worker petitions (H-1B), (TN), (O-1), (E-3) and for signing labor certifications and immigrant/permanent resident petitions. An attorney is only authorized to represent UTRGV if approved by The University of Texas System Office of General Counsel in accordance with procedures established by the Texas Attorney General. Privately retained attorneys do not have the authority to represent UTRGV; therefore, a hiring official must not sign a G-28 (Notice of Appearance) allowing a private attorney to represent UTRGV. Further, to the extent that a beneficiary of a UTRGV petition hires his or her own attorney to represent personal legal interests that individual is solely responsible for the payment of the legal fees under that agreement.
5. Hiring officials must not authorize individuals who are awaiting employment authorization or whose work authorization has expired to work or serve as volunteers.

#### **E. Procedures**

1. *Consultation with the Office of Human Resources*

Hiring officials should consult the Office of Human Resources with any questions related to the immigration status of prospective and current foreign employees.

2. *Employment Petition*

The departmental hiring official or representative should notify the immigration services manager in the Office of Human Resources early in the hiring process if a foreign national will need work permission, as the application process can take several weeks because of its complexity and federal regulatory requirements.

3. *Filing Fees*

Filing fees and legal fees that UTRGV is required to pay will be paid by the sponsoring department. Fees for dependents will not be paid by UTRGV; the individual will be responsible for paying those fees. For an estimate of fees, please contact the immigration services manager in the Office of Human Resources.

4. *Documentation Supporting Petition*

Applications for H-1B temporary worker status require submission of a Labor Condition Application to the U.S. Department of Labor and an I-129 petition to the U.S. Citizenship and Immigration Services. The departmental hiring official or representative must

provide the immigration services manager in the Office of Human Resources the information required to complete these forms. For H-1B petitions, the hiring unit must pay the prevailing wage for the position as determined by the National Prevailing Wage Center (NPWC).

5. *Visa Applications*

Once an employment petition is approved, the beneficiary is responsible for filing the visa application. Appointment arrangements for U.S. embassies and consulates, additional security clearances based on citizenship and gender, and extra scrutiny of individuals who work in areas on the expanded Technology Alert List (a list of sensitive fields of research compiled by the federal government that require clearance), may cause unpredictably long delays in securing the proper visa to enter the United States. The individual visa holder is responsible to ensure that he or she obtains status in a timely manner and maintains status for continued employment at UTRGV.

6. Hiring officials must promptly notify the immigration services manager of any change in employment including the termination of a foreign national.

**H. Relevant Federal and/or State Statutes, Board of Regents' Rule(s), UTS Policy(ices), and/or Coordinating Board Rule(s)**

Immigration Reform and Control Act, 8 USC 1101

Special requirements for admission, extension, and maintenance of status, 8 CFR 214.2

Temporary Employment of Aliens in the United States, 20 CFR 655

**I. Other Relevant Policies, Procedures, and Forms**

None

**G. Dates Reviewed or Amended**

May 19, 2022 - Reviewed and amended (non-substantive: updated responsible executive).