H-1B HANDBOOK

With an Introduction to the Permanent Residency Process

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Welcome to The University of Toledo!

Our institution attracts some of the most talented staff and faculty from around the globe. One of our goals at the Office of International Student and Scholar Services (OISSS) is to provide a platform for sponsoring stakeholders to recruit and retain diverse talent in order to foster academic and professional growth and cultivate a global campus community.

Hiring an employee under the H-1B nonimmigrant classification is highly complex and is a heavily regulated process. Our team is dedicated to guiding a sponsoring College or Department through the intricacies and nuances of federal regulations as it relates to the H-1B program. Sponsoring stakeholders and beneficiaries alike will find this handbook to be a useful resource in understanding how the process works and how to maintain compliance under the program.

Mutual collaboration between key stakeholders will maintain the H-1B program as an irreplaceable conveyance towards the goal of collective betterment and enrichment of The University of Toledo’s academic and professional community. OISSS looks forward to providing informed advice as it relates to the hiring of nonimmigrant employees and will provide expertise, knowledge, and assistance when navigating the federal regulations.

Sincerely,

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This handbook contains information about the rules and regulations that apply to those who have been invited to The University of Toledo to teach, perform research, or otherwise be employed under the H-1B nonimmigrant classification. This handbook will be useful for the sponsoring College or Department as well as the Beneficiary of the H-1B petition.

This document should serve as a baseline or primer as to the rules and regulations for an H-1B petition as it is a brief overview of terminology, processes and common issues. It should be viewed as a jumping off point and although this handbook does address common questions, issues, and challenges, it cannot by its own nature be totally comprehensive. Moreover, the reader should be placed on notice that guidelines, regulations and rules should be viewed as organic and are subject to change as both the rules and interpretation of immigration law seems to be a constantly changing landscape. Filing fees, rules and regulations are subject to change; please check with OISSS for the most up to date information.

Please familiarize yourself with the contents of this handbook. In addition, the Office of International Student and Scholar Services invites you to please bring any and all issues or questions regarding the H-1B process to our attention.

**ABOUT THIS HANDBOOK**

**COMMONLY USED ACRONYMS**

- **CBP**: U.S. Customs and Border Protection
- **DHS**: Department of Homeland Security
- **DOL**: Department of Labor
- **LCA**: Labor Condition Application
- **ODH**: Ohio Department of Health
- **OISSS**: Office of International Student & Scholar Services
- **PERM**: Program Electronic Review Management
- **PW**: Prevailing Wage
- **PWDR**: Prevailing Wage Determination Request
- **UT**: The University of Toledo
- **USCIS**: U.S. Citizenship and Immigration Services

**DISCLAIMER:**

**UNIVERSITY SPONSORED H-1B PETITIONS**

This handbook is limited in scope as it provides general information about the University of Toledo’s non-immigrant and immigrant procedures. The scope of use is intended only for the University of Toledo’s sponsoring Colleges /Departments and the intended employees. The application of federal regulations will vary greatly from employer to employer. Neither OISSS nor this handbook offers any advice to non-UT employees regarding H-1B non-immigrant petitions or permanent residency matters.

The University of Toledo, OISSS, and/or the sponsoring stakeholder cannot guarantee that an H-1B petition will be approved. Moreover, the University, OISSS, and/or the sponsoring stakeholder cannot guarantee the issuance of an H-1B visa for those employees who will need to apply for one while abroad.

The University cannot offer an employment contract that is greater than the authorized period permitted through USCIS or other applicable federal agency. The regulations and statements found in this handbook in no way constitute an employment contract or obligation between The University of Toledo and its employees or prospective employees.

**UNIVERSITY SPONSORED APPLICATIONS FOR PERMANENT RESIDENCY**

An employee or prospective employee is never guaranteed sponsorship of any employment based immigration filing (“green card”). The University of Toledo may but is never obligated to sponsor foreign nationals for permanent residency. More importantly, for those employees chosen for sponsorship, The University of Toledo can never guarantee the approval of any permanent residency application or other related immigrant filings.

This handbook is not all inclusive nor is it a substitute for legal advice on any particular issue.
I. H-1B OVERVIEW

1.1 H-1B NONMIGRANT STATUS

The H-1B is a temporary nonmigrant status that allows foreign nationals to work in the U.S. in a position that meets the requirements of a "specialty occupation". This means that the position must require highly specialized knowledge and skills in order to perform the job duties and must require at least a bachelor's degree (or its equivalent). The U.S. Citizenship and Immigration Services (USCIS) grants employment authorization that is specific to the employer, duties listed, and location. In order to sponsor an individual under the H-1B classification, a U.S. employer must pay the "required wage rate" which is the greater of either the Actual Wage (wage paid to other employees in similar positions with similar qualifications and experience) or the Prevailing Wage which is an average for the occupation in the geographic area as determined by the Department of Labor (DOL). The employer must also attest to certain working conditions under U.S. Department of Labor Laws.

Dual Intent Doctrine

In contrast to most nonmigrant statuses (e.g. F-1 or J-1), the H-1B Beneficiary does not have to maintain nonmigrant intent. At the expiration of a J-1 or F-1 status the presumption is that the individual will return to his or her home country. The H-1B form is a Petition For a Nonmigrant Worker; however, U.S. Immigration law carves out an exception to usual practice and allows immigrant intent. This makes the H-1B a highly coveted status as a foreign national may have "dual intent" which essentially means that the Beneficiary may maintain lawful temporary status and have the intention to stay in the U.S. permanently.

Timeline

As a time for adjudication of an H-1B, it is difficult to estimate the exact processing time with any certainty as there are several governmental agencies involved. The DOL can take up to 2 months to determine a prevailing wage for the position, and subsequently USCIS may take anywhere from 2 to 5 months to adjudicate a petition. Therefore, OISSS strongly suggests any H-1B sponsorship request begin no less than 6 months before the intended start date to prevent a gap in employment. The sponsoring College or Department should remain cognizant of this timeframe and initiate the process with OISSS about six months in advance of the proposed start date. Although a College or Department may opt to file their H-1B petition under Premium Processing ($1225, a fee which is subject to change at the discretion of USCIS), this does not necessarily guarantee an approval and does not speed the DOL processing time period. USCIS states it will adjudicate the petition within 15 calendar days, this means that USCIS will issue one of the following: 1) an approval, 2) a request for more evidence (RFE), or 3) a denial. In an RFE situation, the clock is reset on the 15th day, so it is important to remember that even under premium processing, the petition processing time may be greater than 15 days. (Note: that the Premium Processing relates only to the USCIS adjudication and does not speed up the processing times of the Department of Labor.)

Finite Time Period (Six Year Limit)

The H-1B status is subject to a six-year limit, an exception may exist for individuals who are eligible for the filing of a Permanent Residence application. The petitioner may request up to three years at a time. Another exception to the rule is that an H-1B worker may be eligible for a "new" six years if he/she was out of the U.S. for one year preceding his/her filing for another term or if work performed in the U.S. was seasonal, intermittent, or less than six months a year. Alternatively, the Beneficiary may be able to extend beyond 6 years, if there is eligibility and timely execution of a permanent residency application. It is important for both the Department and Beneficiary to be cognizant of their remaining time and plan accordingly if work authorization is desired beyond the 6 year maximum.

The College or Department should be aware that the submission of H-1B materials to OISSS does not guarantee that the H-1B will be approved. Not all positions qualify as a specialty occupation and the decision to grant work authority will essentially rest with USCIS and/or other governmental agencies. At all times, the sponsoring College or Department cannot provide employment until it is granted by USCIS. NOTE: This holds true even with an H-1B extension request. The College or Department must ensure that any offer of employment must be made contingent on USCIS approval.

If the hiring department has intentions to keep an employee beyond 6 years, the Department is responsible for contacting OISSS at the end of the 4th year of their respective H-1B in order to see what options are available. Remember: any and all H-1B time should be counted, including time used from previous employers.

1.2 ELIGIBILITY FOR H-1B EMPLOYMENT

Employment must be a Specialty Occupation

USCIS will review each H-1B request to ensure the minimum duties of the offered position qualify for a "specialty occupation". The standard factors which USCIS typically uses to determine whether the petition merits an H-1B classification are the following:

1) A bachelor’s or higher degree (or its equivalent) that is related to the offered position; generally the minimum requirement for entry into the field;
2) The job duties are so complex or unique that a degree in a relevant field is required;
3) The degree requirement is common in the industry in similar positions among similar organizations;
4) The employer can show that the organization normally requires a Bachelor’s degree for this type of position.

Minimum Requirements

USCIS is concerned with the minimum requirements of the proposed position not the background of the proposed employee. However, any proposed Beneficiary must meet or exceed the proposed job duties and qualifications and there must exist a logical nexus between the minimum requirements of the proposed position and qualifications of the employed employee. The University of Toledo’s position description and requirements will be a deciding factor to whether or not a proposed position qualifies as a specialty occupation.

Fees

The sponsoring College or Department is responsible for all filing and processing fees associated with the H-1B petition. The prospective employee is not responsible and is not permitted to pay the fees associated with the petition.

Note: In limited circumstances, an H-1B Beneficiary may pay the premium processing fee if it is required solely for the Beneficiary’s personal need, and not the need of the University. For example, the prospective employee needs to travel abroad solely for personal reasons. In such cases, contact OISSS to verify if this exception is applicable.

Summary of Departmental Responsibilities and Potential Adverse Penalties

Please remember that the H-1B is an employer sponsored petition and as such the sponsoring Colleges and Department assume significant responsibilities on behalf of the University of Toledo. Every College and/or Department is responsible for understanding and strictly adhering to the H-1B requirements found in this handbook, as well as the correspondence and documents provided to them. The failure to follow the regulations defined in this handbook and departmental forms result in substantial penalties. Thoroughly read and become familiar with the details and responsibilities listed in this handbook as well as those forms available on our website. Please visit cisp/international/h1bvisas to find our list of forms. The Department of Labor can issue civil fines which may be severe and can range from $1,000.00 to $35,000.00. Moreover, the action or inaction of any one College or Department can have long lasting ramifications for the University of Toledo as a whole. In addition to civil penalties and fines listed above, the University could possibly face deportation from future use of the H-1B program and permanent residency petitions. In extreme cases criminal penalties and possible imprisonment may be imposed.

The hiring College or Department will be responsible for adhering to all internal policies of recruitment and ensuring that their employee is not only following federal rules as to the H-1B regulations but as well as state laws and internal policies, which include but are not limited to the initial processing, I-9 verifications and updates, and internal recruitment policies.

Note: When contemplating a new hire or amendment of an H-1B, the College or Department must ensure that the proposed job offer and/or description has been approved by Human Resources before moving forward with the H-1B petition with OISSS.

In closing, please remember that the success or failure of executing a timely H-1B or Permanent Residency application will hinge on collaboration, amicable and effectual cooperation, and communication between the College/Department, OISSS, and prospective employee.
I. H-1B OVERVIEW

1.3 THE H-1B APPLICATION PROCESS AND TIMELINE: A SEVEN STEP PROCESS (Prepare 6 months in advance)

The sponsoring College or Department is required to follow all internal procedures and policy promulgated by HR or UT as it relates to recruitment and the hiring of a prospective employee. Once this is completed, OISSS can discuss the H-1B application process. It is important to remember that USCIS processing alone may range from 2-5 months. This does not include OISSS processing time or the processing times for filing the Labor Condition Application (7-60 days).

It is for the above reasons that we strongly encourage departments to BEGIN ANY AND ALL H-1B REQUESTS NO LESS THAN 6 MONTHS BEFORE THE INTENDED START DATE.

This timeframe is applicable for either a new petition or an extension. Any H-1B request submitted to OISSS with a requested start date which is less than six months into the future may likely result in a delay in employment eligibility or the prospective employee needing to leave the U.S. and/or be separated from employment.

The Sponsoring College or Department should be aware that the potential H-1B employee’s salary must fall within the range established by the salaries of other similar current workers. If another employee in the same occupational classification has a higher wage than the H-1B employee, the College or Department will need to provide legitimate and lawful reasons for the difference.

Where the proposed position is unique and there are no other employees who currently hold a similar or substantially similar position, then the actual wage should be the wage paid to the prospective employee.

Documentation of data (CFR 655.731): The Department must ensure that they have access to or can keep payroll records showing the wage rate for any and all UT employees in the same occupation or similar occupations, this will include retention of wage rates paid to the employee and those similarly situated as well as benefits documentation.

The Actual Wage must have been set by an authorized representative as indicated by internal policies of the University. It may not be arbitrarily assigned. OISSS only requires submission of the Actual Wage Explanation and Grant Memorandum but the DOL also expects the University to articulate their “wage system.” Every sponsoring organization should be able to adequately explain, based on legitimate business reasons how wage levels were actually determined for their workers in the specialty occupation requested.

Continuing obligation to update adjustments of actual wage data after H-1B hire: Where the Department hires another employee in the same occupational classification or for an approved H-1B, (whether that employee be an H-1B applicant, U.S. Citizen, or other) the actual wage data should be updated and submitted to OISSS to reflect the new hire information.

The duty to update Actual Wage Data is also triggered during periodic increases or decreases in salary; moreover, any prospective change in salary should be first reviewed with Human Resources for staff positions, as well as submitted to OISSS prior to the changes going into effect. An amendment may be needed before the University approves the change. Sponsoring Departments or Colleges are reminded that they must follow internal policy. Regardless of whether the position is staff or faculty any change in wage must be communicated to OISSS prior to it going into effect.

STEP 1(a): INFORMATION GATHERING: COMPLETE DEPARTMENT FORM

FOR FACULTY AND UNION POSITIONS: Before H-1B eligibility can be determined the Department Form should be filled out and emailed to OISSS at UTH1B@UToledo.edu with subject line “H-1B Step One.”

FOR STAFF POSITIONS: Before H-1B eligibility can be determined the Department Form should be filled out and emailed to OISSS at UTH1B@UToledo.edu AND HRDCOMP@UToledo.edu with subject line “H-1B Step One.”

The above timeline is an approximation.
STEP 2: OISSS REVIEW AND ANALYSIS OF FORMS AND PROCESSING FEES (2 TO 3 WEEKS)

Upon receipt of all application materials and required fees, OISSS will perform an analysis and review of the information provided.

Note: This is generally a two week process but in order to provide equitable treatment to all departments and colleges, OISSS has adopted a first in first out procedure—meaning that although we will do our best to process those petitions that have upcoming deadlines, OISSS’s procedure is to process those petitions that were received timely and provided in advance first.

STEP 3: DETERMINING REQUIRED WAGES (1 TO 6 WEEKS)

The Department of Labor (DOL) regulations require the University to pay a Beneficiary the Prevailing Wage or Actual wage, whichever one is the higher salary. Thus, the wage offered to the potential H-1B employee must meet or exceed the prevailing wage for the occupation in our geographic area of employment as established by the DOL.

In determining the prevailing wage, OISSS advises that the University submit a Prevailing Wage Determination Request to the DOL, who in return will provide the LCA to the DOL for official certification of the LCA. (DOL estimated processing time is 7 calendar days).

Note: Sponsoring stakeholders are reminded that as with the hiring of any employee there is an existing University compensation standard. In the instance where a Prevailing Wage is determined to be greater than the Actual Wage, it is the sponsoring Department or College’s responsibility to ensure that the proposed Prevailing Wage falls within the University compensation standard. This means that the sponsoring College or Department must reach out and obtain approval from Human Resources regarding any proposed wage. H-1B sponsorship is contingent on the University paying either the Actual or Prevailing Wage, whichever is the higher salary. Where a Prevailing Wage exceeds the University compensation standard the University may not be able to sponsor the proposed Beneficiary.

STEP 4: POSTING THE NOTICE OF FILING OF AN LCA (2 WEEKS)

The Department will be held responsible for the posting requirements under the LCA. The “Notice of Filing of a Labor Condition Application” must be posted for 10 consecutive business days (including weekends, holidays, or days the business is closed) in 2 conspicuous/unobstructed and obvious and different locations at each place of employment and/or building where the employee will work. OISSS will provide the Posting Notice and initiate LCA to the Department to physically post. After 10 consecutive business days, the sponsoring department will sign the posted notice and then mail to OISSS. The location of each posting and the date the Notice was posted (handed) and then removed must be indicated on the Notice and signed by the person posting it. (Here, it is critical to be accurate and include all information about where the employee will be working throughout the entire approval period)

When the position involves a collective bargaining agreement the LCA or notice should be provided to a collective bargaining representative.

STEP 5: DEPARTMENT OF LABOR CERTIFICATION (DOL) OF LCA (1 WEEK)

Once OISSS verifies that the “Notice of Filing” was posted for 10 consecutive business days, OISSS will submit the LCA to the DOL for official certification of the LCA. (DOL estimated processing time is 7 calendar days).

Note: A prospective employee that requires a Change of Status (COS) will require an H-1B (I-797) Approval Notice to be received by mail prior to any granting of work authority. Please contact OISSS to discuss these situations. The Extension and Portability rules stated above do NOT apply in change of status applications.

STEP 6: PREPARATION OF THE H-1B PETITION (1 WEEK)

Once the LCA is certified, OISSS will draft the final preparation for the I-129, Petition for a Nonimmigrant Worker and supporting documentation, and submit the entire petition to USCIS for processing.

STEP 7: USCIS PROCESSES H-1B PETITION/I-129 (2-5 MONTHS)

The current processing time for H-1B petitions may range from 2 to 5 months. If the petition is premium processed, USCIS will process the petition within 15 calendar days of receipt. However, premium processing does not ensure approval or necessarily an adjudication within 15 days. A Request for Evidence (RFE) may enlarge the 15 day window, and an adjudication can ultimately result in an approval or denial.

1.4 H-1B EXTENSIONS AND PORTABILITY

(When a prospective Beneficiary currently holds valid H-1B status.)

Extension (up to 240 days or until adjudication):

Current UT H-1B Employee in valid H-Status: A foreign national may work up to 240 days without the need for an Approval Notice (I-797) upon the filing of a non-frivolous I-129 petition and when UT is in possession of a USCIS Receipt Notice. Generally, this requires the prospective employee to maintain their lawful H-1B status; without expiration, and to not have engaged in unauthorized employment in the past.

The sponsoring College or Department should initiate the H-1B process 6 months prior to the current expiration, or initiate the process prior to a contemplated change in job title, location, duties, or other substantial/material change. The extension procedure will be just as time intensive and will require the same petition and materials as a change of status petition.
The sponsoring College or Department will have ongoing H-1B obligations throughout the approval period.

2.1 U.S. DEPARTMENT OF LABOR AND THE LABOR CONDITION APPLICATION (LCA)

As mentioned earlier, for every H-1B petition an LCA must be filed and certified. Upon this certification the employer is attesting to the following obligations:

1) The H-1B employee will be paid the “actual wage” (the wage paid to other employees in similar positions with similar qualifications and experience) or the “prevailing wage” for this occupation in our geographic location as determined by DOL, whichever is higher;

2) The employment of an H-1B worker will not adversely affect the working conditions of other workers similarly employed in the area of intended employment;

3) There is no current strike or lockout at the place of employment; and

4) A notice of filing of the LCA was posted in at least two conspicuous locations at the place of employment for ten (10) business days. (Employment is defined as every worksite.)

In summary, the Labor Condition Application is an attestation by the department that the wage paid is the higher of either the actual wage or the prevailing wage. This wage must be paid through the entire period of the approval notice. Changes to an employee’s wage should not be made without contacting OISSS prior to the adjustment.

2.2 CHANGES IN THE H-1B EMPLOYEE’S POSITION

The College or Department must monitor and notify OISSS regarding the following matters prior to them going into effect:

✔ Notify OISSS of any changes in employment prior to them going into effect:

- H-1B employment is limited and specific to the employer, specific to the particular position and duties, and specific to the physical location(s) listed on the H-1B application. In accordance with 8 C.F.R., § 214.2(h)(2)(i)(E), an H-1B employer must notify USCIS immediately of “any material changes in the terms and conditions of employment.” The Department must contact OISSS prior to any changes in the employment, including but not limited to, changes in job title, requirements, qualifications, or duties of the employment, hours, pay, promotions, demotions, and work location (work site or building). Submitting an amended H-1B to USCIS will be required prior to a material/substantial change going into effect.

Note: Work authorization under an H-1B petition is very specific to the original request. It is specific to the job duties, pay, and work sites originally listed. Sponsoring departments should take care only to employ the employee in the capacity as initially approved and requested. An amendment may be possible but the amendment must be filed prior to the change going into effect. Discuss with OISSS when unsure.

✔ Notify OISSS of employment termination, employee resignation, or end of employment obligation. UT should ensure that it follows all of its internal policies regarding termination or employee separation. Further, USCIS must be notified if an employee is terminated (by UT) prior to the end of his or her authorized period of stay.

Note: The department will be liable to pay reasonable costs of transportation for the employee to return to his or her home country of residence if UT is severing the relationship. However, the department has no obligation to provide a return home ticket when the employee voluntarily resigns before their H-1B status expires. However, please provide a 30 day notice prior to any separation; whether it be voluntary or involuntary, or simply the expiration of the term. Documentation of the separation must be maintained regardless if it is voluntary. The H-1B status ends upon separation/termination of the employee. The College or Department must notify OISSS so that we may notify USCIS of the separation.

✔ Change in salary or change in job title: OISSS should be contacted before any significant change of salary occurs which includes but is not limited to; a salary or benefit reduction as well as a major promotion. The salary that was originally submitted must be guaranteed for the time frame requested.

Change of job location or worksite: If the College or Department transfers their employee to another building (on Campus) and/or off site location which was
not listed on the original H-1B petition, the University may have to file a new LCA and H-1B petition. Where the physical location of employment will change, the sponsoring College or Department must contact OISSS prior to the change in job location regardless if the job remains the same and remains on campus.

✔ Outside employment: The H-1B is very specific to those duties stated in the original petition. If payment or benefit is received for services outside the approved job duties, this is most likely unlawful employment, which jeopardizes the validity of the employee’s H-1B status and which may affect future filings and/or ability to obtain a permanent residency card. The Department should be mindful to only provide employment that has been sanctioned by USCIS. The approval of an H-1B does not allow the employee to work any other job at UT.

✔ Leave of absence: USCIS is focused on whether the employee has an “expectation of continued employment” at the time the leave is taken. Generally, leave of absences are not condoned.

✔ Travel: If the employee plans to travel abroad please contact and notify OISSS before travel.

The hiring College, Department, and/or Principle Investigator is responsible and must certify that any H-1B specialty worker does not need an Export Control License and will not be exposed to specific technology, data, or information which is subject to export control regulations. If the sponsoring stakeholder’s employee will be exposed, a plan must be made with the Office of Research & Sponsored Programs and this must happen prior to the employee receiving work authority.

Please note that the failure to comply with export control laws can result in serious personal consequences for both the responsible stakeholders (Department Chair, Supervisor, and/or Principle Investigator) and the employee. These individuals are making serious legal attestations and failure to comply with them may include not only substantial civil penalties but also imprisonment.

A copy of the signed Export License Review Form should be sent to Pamela Suhan (pamela.suhan@utoledo.edu) at the UT Office of Research & Sponsored Programs. Further, if the hiring College or Department is unsure about whether or not their employee will be exposed to controlled technologies or if licenses need to be in place, then the sponsoring College or Department must verify that a license is unneeded.

Please remember that the University can be subject to adverse fines and penalties for failure to provide notice of material/substantial changes.

2.3 EXPORT CONTROL

Export control laws are federal regulations that govern how certain information, technologies and commodities can be transmitted overseas or to a foreign national on U.S. soil. The scope of the regulations is broad: they can cover exports in virtually all fields of science, engineering and technology and apply to research activities regardless of the source of funding.
III. H-1B INFORMATION AND REGULATIONS FOR THE FOREIGN NATIONAL EMPLOYEE

3.1 OVERVIEW OF IMPORTANT DOCUMENTS FOR FOREIGN NATIONAL EMPLOYEES

Passport: Passports must be valid throughout the employee’s time in the United States and at least six months beyond the duration of stay. Individuals with an expired passport may be denied re-entry into the U.S. after a trip abroad. Please contact the responsible Consulate/Embassy directly in order to apply for an extension or renewal of passports.

H-1B Visa: H-1B visitors, unless visa exempt, are required to obtain a valid H-1B visa stamp at a U.S. embassy or consulate abroad in order to enter the U.S. The visa will show an expiration date. If the visa expires while the employee is in the U.S., it may not be a problem as long as the I-94 is valid. However, it is important to have a valid visa when reentering the U.S. after leaving the country. An H-1B entry visa can only be obtained at a U.S. embassy or consulate abroad.

I-94 (Arrival—Departure Record): The I-94 record shows the employee’s non-immigrant status, date and place of entry to the U.S., a unique I-94 admission number, and an “admit until” date. The “admit until” date on the I-94 typically matches the expiration date on the I-797 approval of the H-1B petition. The date on the I-94 controls authorized length of stay, but does NOT grant work authority.

Please Note: The electronic arrival/departure record can be obtained by entering requested information at https://i94.cbp.dhs.gov. After travel and upon re-entry, the employee needs a valid I-94 and I-797. This works both ways; an I-94 admit until date may be valid but this does NOT grant any work authority unless the I-797 dates are current and valid as well.

3.2 EMPLOYEE INFORMATION AND RESPONSIBILITIES

Although the H-1B is an employer sponsored petition, each Beneficiary must comply with all USCIS rules as the I-797 approval of the H-1B petition. The employee must ensure that their I-797 (H-1B Approval Notice) is valid and the I-94 corresponds with the effective dates on the approved H-1B. I-94 validity may be checked online at https://i94.cbp.dhs.gov. After travel and upon re-entry, the employee should mail a copy of their electronic I-94 verifying legal status to OISSS. Having a valid I-94 and valid I-797 is required to maintain work authority at UT.

Note: Both the I-797 and the I-94 must be valid in order to have work authorization. If the I-94 “admit until” date has passed then the Beneficiary is out of status. Regardless of what the validity period on the H-1B Approval Notice states, every employee needs a valid I-94 and I-797. This works both ways; an I-94 admit until date may be valid but this does NOT grant any work authority unless the I-797 dates are current and valid as well.

A Note on Travel Abroad and Status: Upon reentry into the U.S. after a trip abroad, if the Beneficiary’s passport expires prior to the H-1B end date, CBP may short end the I-94 “admit until” date. Example: An H-1B employee is granted work authorization for 3 years from 07/02/2014 until 7/1/2017. The employee travels abroad but has a passport that expires on 5/14/2016. Upon return to the U.S. the CBP border official stamps “admit until” 5/14/16 in the Beneficiary’s passport. This results in the employee’s status expiring on 5/14/16 despite their H-1B approval notice being valid through 7/1/2017. Here, the employee should discuss with OISSS immediately the options available for extending status. It is the employee’s obligation to maintain lawful status throughout the entire validity period.

Maintaining status: The employee must ensure that their I-797 (H-1B Approval Notice) is valid and the I-94 corresponds with the effective dates on the approved H-1B. I-94 validity may be checked online at https://i94.cbp.dhs.gov. After travel and upon re-entry, the employee should mail a copy of their electronic I-94 verifying legal status to OISSS. Having a valid I-94 and valid I-797 is required to maintain work authority at UT.

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A Note on Travel Abroad and Status: Upon reentry into the U.S. after a trip abroad, if the Beneficiary’s passport expires prior to the H-1B end date, CBP may short end the I-94 “admit until” date. Example: An H-1B employee is granted work authorization for 3 years from 07/02/2014 until 7/1/2017. The employee travels abroad but has a passport that expires on 5/14/2016. Upon return to the U.S. the CBP border official stamps “admit until” 5/14/16 in the Beneficiary’s passport. This results in the employee’s status expiring on 5/14/16 despite their H-1B approval notice being valid through 7/1/2017. Here, the employee should discuss with OISSS immediately the options available for extending status. It is the employee’s obligation to maintain lawful status throughout the entire validity period.

Maintaining status: The employee must ensure that their I-797 (H-1B Approval Notice) is valid and the I-94 corresponds with the effective dates on the approved H-1B. I-94 validity may be checked online at https://i94.cbp.dhs.gov. After travel and upon re-entry, the employee should mail a copy of their electronic I-94 verifying legal status to OISSS. Having a valid I-94 and valid I-797 is required to maintain work authority at UT.

Final 6 year period: USCIS allows an H-1B Beneficiary to work for a total of 6 years. Keep in mind that H-1B status and work authorization ends at the end of 6 year period.

Lecturing or other type of consulting work: An employee may not receive a benefit, honorarium or other monetary gain for giving lectures. An employee “may” be reimbursed for travel and reasonable expenses; although it is advisable to contact OISSS, if this is contemplated. Remember that any work outside the scope of approved duties is not permissible and if performed by the employee means most likely the Beneficiary will be engaging in unlawful employment.

Export control: Every employee certifies that he or she is not exposed to controlled technology or that an approved plan was put in place before work began by the Office of Research & Sponsored Programs. Export control laws are federal regulations that govern how certain information, technologies and commodities can be transmitted overseas or to a foreign national on U.S. soil. The scope of the regulations is broad: they can cover exports in virtually all fields of science, engineering and technology and apply to research activities regardless of the source of funding. Failure to comply with these laws can have serious consequences, both for the institution and for the individual researcher. Potential penalties include fines and possible imprisonment.

Tax filing: the University of Toledo does NOT offer any tax advice. The employee is advised to consult a tax professional regarding treaties and other obligations under federal, state, and local law.

Change of status: Where the employee has a Change of Status (from H-1B to other status) through a self-petition or otherwise, please inform OISSS of this change of status prior to it going into effect.

I-9: The employee is reminded of his/her obligation to complete or update his or her I-9 in a timely manner; this should happen no later than the first day of employment.

Substantial changes in employment: H-1B petitions are very specific and limited to the approved specialty occupation which was approved at the time of filing the original H-1B. Changes to the salary, physical location of employment (changing buildings, adding a building), job title, promotions, demotions, additional duties, or anything that might be deemed material may require an amendment of an H-1B. Employees may not “moonlight” or receive benefit from other employment. Further, even if the job title remains the same but the duties materially morph into something that was not intended, please discuss with OISSS. Employment outside of the approved scope may affect the Beneficiary’s current status and future ability to remain and work in the U.S.

Address reporting requirement: USCIS requires that all H-1B and H-4 status holders notify them of any address changes within 10 days of moving by submitting AR-11. For instructions please see http://www.uscis.gov/addresschange.

Employee separation or termination: When a termination or separation from UT becomes effective, the H-1B status is also terminated. The last day of work is when the H-status ends. Reminder: there is no “grace period” that allows the employee to stay in the U.S. after separation or termination. Assuming no other petition granting valid status has been filed, the foreign national is immediately out of status. Employees, who will be separating from UT, should coordinate with their Department, HR, and OISSS prior to the termination of employment.

Porting: When transferring to another employer, in order to maintain status, the employee must continue working for UT until the new employer has taken certain steps in filing an amended H-1B petition. The employee must consult with their new employer for information regarding that process. (Please remember that there is No Grace Period upon expiration of the H-1B or separation from UT).

Expiration of approval notice and H-1B time: The employee should be aware of their expiration date and aware that although the H-1B is an employer sponsored petition, working beyond the expiration period is unlawful employment.

Maintain valid passport: Employees should maintain a valid passport and prepare to renew the passport in a timely manner.
III. H-1B INFORMATION AND REGULATIONS FOR THE FOREIGN NATIONAL EMPLOYEE

3.3 TRAVEL AND RE-ENTRY TO THE U.S. FOR THE H-1B EMPLOYEE

Prior to any travel, the H-1B employee must consult with OISSS. Traveling abroad (including Canada or Mexico) will always pose certain risks for delay. If travelling outside of the U.S., the documents listed below are typically needed to re-enter:

✔ Valid passport (at least valid for 6 months in the future);
✔ Valid H-1B visa stamp, (if the employee does not have a valid H-1B visa, they will need to apply for one at a U.S. Embassy or Consulate prior to their return to the U.S.);
✔ Original I-797 Approval Notice (Top and Bottom Portion);
✔ A copy of the H-1B petition;
✔ Employment verification letter;
✔ Copy of J-Waiver (if applicable); and
✔ Most recent paystubs

An employee with an expired visa stamp will have to schedule an appointment to renew his/her H-1B visa stamp with a U.S. consulate. Certain exceptions may apply for travel to Canada and Mexico (automatic revalidation), but all employees should discuss travel plans with OISSS prior to departure. All travel has inherent risks as to the processing times for allowing an H-1B employee back into the U.S.

Note: In some instances, a consulate may implement 221(g) administrative processing in order to process the H-1B applicant’s visa stamp. Processing times vary but be aware in those instances there can be a significant delay and the time period to obtain an H-1B visa can take several months.

Those with a pending Change of Status are advised not to travel outside the U.S. until the H-1B has been approved. Travel in this circumstance may trigger abandonment. If travel is necessary while the H-1B is still pending, individuals must wait until they receive the Approval Notice and then obtain an H-1B visa at a U.S. Embassy or Consulate prior to re-entering the U.S. The employee can enter no earlier than 10 days prior to the effective start date indicated on the approval notice.

Pending H-1B Extensions: Generally, it is ill-advised to travel even in an extension circumstance; however it is not an issue of abandonment. Please consult with OISSS prior to any travel abroad.

3.4 H-1B APPROVAL DOCUMENTS AND OBTAINING H-1B STATUS (Employee Abroad vs. Employee in U.S. and Change of Status “COS”)

If USCIS approves an H-1B petition for UT, the I-797 Approval Notice will be mailed to OISSS. OISSS will contact the employee or department to arrange pick up/mailing of the original I-797 Notice of Approval.

Individuals currently outside the United States: must apply for the H-1B visa stamp at a U.S. Embassy or Consulate after they receive the I-797 Approval Notice from OISSS. Please note that individuals with approved petitions may enter the U.S. no earlier than 10 days prior to the effective start date indicated on the I-797.

Upon entry to the U.S., individuals will receive an admission stamp near their H-1B visa stamp in their passport. Individuals should go to https://i94.cbp.dhs.gov/ to retrieve their electronic I-94 Arrival/Departure record.

Note: the College or Department should factor additional time in for consulate processing. OISSS will have to wait to receive an approval notice and will then mail or scan the original to the Beneficiary who will then have to set up a consulate appointment. This inherently enlarges the processing time.

Individuals currently in the U.S. studying or working in another nonimmigrant status [F-1 (OPT), J-1]: must wait until the Change of Status to H-1B is approved before they can begin working. The employee must also have fulfilled any one of the following post-completion Optional Practical Training (if applicable—relevant only for those who have worked/studied under the J-1 classification).

Those with a pending Change of Status are advised not to travel outside the U.S. until the H-1B has been approved. Travel in this circumstance may cause delay, however it is not an issue of abandonment. Please consult with OISSS prior to any travel abroad.

3.5 DEPENDENTS AND H-4 STATUS

The spouse and/or minor children (under age 21) of employees in H-1B status are eligible for H-4 dependent status. If the dependent is outside of the U.S., he or she may apply for an H-4 visa stamp at a U.S. Embassy or Consulate. If the dependent is in the U.S. under another status, the dependent should apply for a Change of Status when the principal’s H-1B petition is submitted.

As a courtesy OISSS will submit form I-539, Application to Extend/Change Nonimmigrant Status, at the same time the H-1B petition is submitted for the Beneficiary. However, the University of Toledo does not sponsor the H-4. The application is filed by the dependent or their guardian, and the H-4 (or their guardian) will be responsible for completing the form. Please consult with OISSS for completing the form.

Note: DHS is scheduled to extend employment eligibility for CERTAIN H-4 Dependent Spouses of H-1B Nonimmigrants who are seeking employment based lawful permanent resident status. This is slated to be effective May 26, 2015. See http://www.uscis.gov/news/dhs-extends-eligibility-employment-authorization-certain-h-4-dependent-sponsors-h-1b-nonimmigrants-seeking-employment-based-lawful-permanent-residence.

H-4 dependents may NOT work in the U.S. They are eligible to study but not able to hold any student employment positions or assistantships.
4.1 OVERVIEW OF PERMANENT RESIDENCY

Individuals may obtain Permanent Residency (PR) through several ways; through employment based petition, family sponsored petitions, marriage to a U.S. Citizen, Asylum, Diversity Visa Lottery and through certain self-petitions (which are commonly EB-1(a) Extraordinarily Ability, or self-petitioned National Interest Waiver (NIW)).

The University plays a role when sponsoring employment based petitions such as Outstanding Professor or Research Category [EB-1(B)], National Interest Waiver (NIW) petitions [EB-2], or Permanent Labor Certifications [EB-2 and EB-3]. Note: NIW can be self or employer based petition.

The College or Department should contact OISSS to discuss employment based petitions. Any employment based sponsorship requires that the University have the Ohio Attorney General’s office appoint legal counsel. Private attorneys may not be used for employer sponsored petitions. Departments and Colleges are urged to discuss how this works with OISSS and the differences between employer sponsorship and self-petitions.

Note: The University of Toledo can never promise that the sponsorship of an employment based application for Permanent Residency will be successful. The certification or approval of any application rests with U.S. governmental agencies. The Department and Employee should be on notice that even a petition that is timely filed does necessitate approval or a guarantee of a “green card”. Stakeholder Pointer: If the University is interested in sponsoring an employment based application the process should be initiated with the prospective Beneficiary having at least 2 years of H-1B time remaining. It is advised to discuss employment based eligibility as soon as possible and to begin no later than year 4 of a Beneficiary’s H-status.

4.2 APPOINTED COUNSEL FOR EMPLOYMENT BASED PERMANENT RESIDENCY OPTIONS

For every employer/UT sponsored position, the University of Toledo must use only attorneys appointed by the Ohio Attorney General. No department or employee may use a private attorney for employer sponsored petitions. (Note: Self petitions do not have these restrictions). The University’s attorney upon Departmental request can take a look at the prospective employee’s qualifications and make recommendations regarding whether other “green card” filings exist. Although the Labor Certification process is the most common filing for some individuals there may exist other options, for example, National Interest Waivers, EB-1, and others. It is important to discuss what eligibility may exist for employer sponsored applications as well as potential self-petitions. Please contact OISSS with questions.

4.3 EXEMPTIONS TO LIMITATIONS OF STAY (6 YEARS) – AND 7TH YEAR H-1B EXTENSIONS (AC 21)

One way to extend H-1B status beyond 6 years is through employment based sponsorship that began in a timely fashion. This most likely involves Department of Labor PERM (Program Electronic Review Management System) processing. Under the American Competitiveness in the 21st Century Act (AC21) the H-1B nonimmigrant may extend their six-year limitation if 365 days or more have passed since the original filing date of the Labor Certification (PERM) [AC 21 106(a)]. This means the University may request an H-1B extension beyond the normal 6 years if 1 year has passed since the filing of the PERM. However, in order to file the PERM the sponsoring stakeholder should understand that it may take a year to prepare the PERM.

The College or Department stakeholder should be cognizant of the time intensive nature of preparing a PERM and AC21 rules regarding H-1B extensions when considering sponsoring an employment based immigrant petition. Any offer of sponsorship should only be given with these rules and guidelines in mind.

An AC21 extension may also come into play with applications that have an approved I-140 (Immigrant Petition). However, if the Department believes it will want to sponsor an employee beyond the 6th year expiry date then it is strongly recommended that the College or Department begin the Labor Certification process by the end of the Beneficiary’s 4th year of H-1B status.

4.4 GENERAL REQUIREMENTS OF A LABOR CERTIFICATION (PERM)

The process begins with UT seeking a labor certification through the Department of Labor using their Program Electronic Review Management system or (PERM); Section 212(a) (5) of the Immigration and Nationality Act (INA) essentially states that a U.S. employer may hire
IV. PERMANENT RESIDENCE PROCESSING

a foreign national for a permanent position if they can obtain from the DOL, after testing the U.S. labor market, a certification that there are not enough workers in the U.S. who are “able, willing, qualified” and the employment of the foreign national will not adversely affect the wages and working conditions of other U.S. workers who are similarly situated (also see 20 CFR 656.1(a)).

Below is a summary of some of the important steps for a Labor Certification under PERM:

1) Appointment of Assigned Counsel to assess the likelihood of the Labor Certification;
2) Analysis of minimum requirements of the prospective employment, internal policies, and review of prospect position by HR (The College or Department must submit to Human Resources the prospective job title and job duties and receive approval prior to filing a Prevailing Wage Determination);
3) The Job offer must be full-time and permanent;
4) Employer Attestation/Agreement of Sponsorship and the job must be full-time and permanent;
5) The Job offer must be full-time and permanent;
6) Prospective employee must meet the qualifications of the foreign national;
7) Prevailing Wage Determination obtained from DOL;
8) Specific Employment Based Recruitment steps;
9) The Job offer must be full-time and permanent;
10) The College or Department will be responsible for following the appropriate attorney’s advice regarding all aspects of recruitment, from advertising for the position to the interview process, and all any other procedures related to labor certification. As each case will be unique, how the process will develop will be contingent on the facts of the application.

Note: Each PERM application has additional steps that should be discussed with the OAG’s Assigned Counsel. In addition, understand that the certification of a PERM does not grant a “green card” as there are additional steps that include the filing of an I-140 (Immigrant Petition) and then an I-485 (Adjustment of Status). Furthermore, depending on the foreign national’s origin of birth, the Adjustment of Status may be backlogged for years. (e.g. India and China historically have per country limitations)

The College or Department will be responsible for submitting requested documents, information, and forms to the appointed counsel. OISSS will be acting in a limited capacity as a liaison. The College or Department will be responsible for following the appointed attorney’s advice regarding all aspects of recruitment, from advertising for the position to the interview process, and all any other procedures related to labor certification. As each case will be unique, how the process will develop will be contingent on the facts of the application.

Record retention 5 years: The sponsoring College or Department should keep records of their recruitment and other steps taken for a minimum of 5 years from the filing of the PERM.

Timeline: As the recruitment process and processing times of the labor certification are very time intensive, the labor certification process should begin with the Beneficiary having at least 2 years of H-1B time remaining. If the College or Department elects to sponsor a Labor Certification, then please be mindful of this timeline. It should be noted that the sponsoring Department may choose to initiate the process earlier if desired.

The analysis of what type of employment based filing is most appropriate may vary. It is strongly recommended that at least 1 year time is set aside solely for analysis, recruitment, and preparation of the employment based filing. Further, although subject to change; historically the processing of a PERM application may take up to 8 months to be certified, this is if it is certified, which is not a guarantee.

Once the PERM is filed the application will be reviewed by a Certifying Officer who will issue a: 1) Certification; 2) Denial; or 3) Audit Request. In the instance of an audit, UT has 30 days to respond to the Department of Labor requests. The Labor’s decision to grant or deny may take over 1 year, possibly 2 years. In the scenario where a PERM has not been filed with 365 days / 1 year of H-1B time remaining, the AC21 rules will not allow an H-1B extension.

Due to the fact that any PERM filing may be audited, the sponsoring college or department must take into consideration that any offer of sponsorship is contingent on approval, and that the exceptions to extend a prospective Beneficiary’s H-1B status beyond 6 years may not be possible if not filed timely. Sponsoring stakeholders must keep realistic contingencies in mind and draft proposed employment offers accordingly.

4.5 TYPE OF OFFERED POSITION UNDER (EB-2) LABOR CERTIFICATION

As to the differences between the Labor Certification processes under the EB-2 category, the duties of the position will determine if the petition is filed under “Special Handling” or “Basic Recruitment”.

4.5(a) LABOR CERTIFICATION: SPECIAL HANDLING (FACULTY OR TEACHING POSITIONS) (EB-2)

When an applicant is seeking permanent residence in a traditional tenure track or faculty position, the College or Department will have to show that this candidate was selected pursuant to a competitive recruitment and that he or she was the most qualified applicant. The role of the employer will be made a recommendation on what positions qualify for Special Handling and how to proceed if it is unclear.

A general summary of “Special Handling” steps include but are not limited to:

1) Obtaining a Prevailing Wage Determination;
2) Printed advertisement of offered position; including specific information about the position, in a national professional journal for the requisite time period. The University will also need to follow internal policy and follow standard recruitment methods;
3) Posting of an internal Notice of Filing; and
4) A competitive recruitment report, which demonstrates clearly that the noncitizen/prospective employee, was found more qualified than any and all U.S. workers who applied for the position.

The general summary of steps include but are not limited to:

1) Obtaining a Prevailing Wage Determination;
2) UT will need to perform at least 6 recruitment methods, which include but are not limited to:
   • Advertisement of position in two print advertisements (i.e. 2 Sunday editions in the Toledo Blade);
   • 30 Day Job Order with the Ohio Department of Jobs and Family Services (ODJFS);
   • Internal Posting on the University of Toledo website;
   • A minimum of 3 other qualified recruitment methods from a list of 10 alternatives;

4.5(b) LABOR CERTIFICATION – BASIC RECRUITMENT (NON-TEACHING PROFESSIONAL POSITIONS) (EB-2)

Prior to filing a PERM or Labor Certification Application, UT must demonstrate that it adequately tested the labor market in the preceding six months without finding any qualified U.S. workers. Here, the test is ensuring that there were no U.S. applicants that were minimally qualified, and who were ready and able to take the position on the terms offered.

Note: The standard for basic recruitment is dramatically different than the standard for special handling. In this scenario, UT shall not sponsor the Labor Certification if any minimally qualified U.S. worker applies for the posted position.
Note: Documentation and recording these recruitment steps is very important—please discuss with the assigned attorney steps that will need to be taken, as to the contents of the advertisement, the duration each advertisement must remain up, and evidencing that the steps have been taken.

3) Internal Notice of Filing;
4) PERM (must be filed within 180 days of selection of the candidate); and
5) A detailed report outlining in detail the recruitment procedure and the fact that no U.S. worker was minimally qualified for the posted position.

Note: generally this will require a description of recruitment steps taken, number of applications received, steps taken to contact lawfully rejected applicants timely (7 days from receipt of application); interview process of applicants, number of people hired, number of U.S. workers rejected, and the lawful job-related reason why they were rejected. Please discuss with the Assigned Counsel what steps must be taken as to applicants (job seekers) that may apply for the position. This is an outline but is not totally comprehensive as appointed counsel will advise as to the proper steps and regulations.

A U.S. worker may be “minimally qualified” if the applicant lacked the skills necessary at the time to perform the duties but the skills could have been acquired during a “reasonable” period of on the job training. Remember, that the above is a brief summary and discussion with appointed legal counsel will flesh out the above as well as other requirements. Again, the process should start with ample H-1B remaining and best practice calls for the process to begin with a prospective Beneficiary having at least 2 years of H-1B time remaining.

The College or Department should keep documentation and all evidence of the filing for at least 5 years from the date of filing the PERM. The above is a simplified summary of the Labor Certification process. The assigned attorney will provide the sponsoring College or Department with detailed steps and explain the additional rules and regulations that may be applicable.

4.6 EB-1(B) OUTSTANDING PROFESSOR/RESEARCHER CATEGORY

Under this category a green card may be obtained for a prospective researcher or faculty member who has an outstanding record of scholarly achievement in his or her field. The bar is set very high to be eligible for this category. USCIS has described the key requirements for an EB-1B as the following:

1) Demonstrated international recognition for outstanding achievements in a particular academic field;
2) Have at least 3 years of experience in teaching or research in an academic area; and
3) Offered a permanent position (tenure track teaching or comparable research position) with the University of Toledo for an indefinite duration.

Supporting Documentation to Demonstrate Outstanding Achievements:

Two (2) of the following must be submitted:

- Evidence of receipt of major prizes or awards for outstanding achievement;
- Evidence of membership in associations that require their members to demonstrate outstanding achievement;
- Evidence of published material in professional publications written by others about the alien’s work in the academic field;
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field;
- Evidence of original scientific or scholarly research contributions in the field;
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

For more information: uscis.gov/working-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1

The EB-1B avoids the need to file a Labor Certification through the DOL, so although the documentation and evidence will be extensive, this type of petition may be a faster route, when eligible. An analysis and review of eligibility will be conducted prior to beginning this application. The ultimate decision to pursue an EB-1B category will be determined by the sponsoring stakeholder, assigned attorney, and OISSS.
The Ohio Department of Health (ODH) participates in the State 30 program in order to increase access to needed health care services for certain underserved areas, or where there is a shortage of primary care physicians. ODH will review applications in Health Professional Shortage Areas (HPSAs) as well as placements in certain areas designated as Medically Underserved Areas (MUAs). Generally, the program can recommend up to 30 J-1 waivers per fiscal year where the foreign medical graduate will be practicing in a HPSA and MUA. Another 10 “FLEX” spots may be available depending on the type of patient mix and access to care.

This program is most commonly sought by Department’s seeking to obtain a J-1 waiver for a foreign medical graduate who is a candidate for a prospective Assistant Professor or Physician position. If granted this may avoid the two (2) year home country residency requirement for the Beneficiary, resulting in the University’s ability to file an H-1B petition for the prospective employee.

OISSS will assist the sponsoring Department in obtaining appointed counsel, who will then provide legal advice as to the entire process. Once counsel is appointed, the College or Department will be charged with the responsibility of filling out the Ohio State 30 J-1 Visa Waiver Program Application Packet as well as any other required forms, such as form DS-3035, and to submit the form to the attorney. The College or Department will provide all information directly to the attorney, as well as being solely responsible for being aware of deadlines and regulations.

The application process and the timeline vary year to year and the Department is advised to consult with their assigned attorney as early as possible to discuss the details. The University of Toledo generally only sponsor a limited number of Conrad Waiver applications per year.

This waiver is never a guarantee regardless of sponsorship and the Department should perform their due diligence regarding whether or not their application will qualify. Sponsorship will be contingent upon the application qualifying as well as University stakeholders coming to a consensus on supporting an application where there are multiple departments or interest from the Health Science Campus.
The TN (TRADE NAFTA) refers to North American Free Trade Agreement for Canadian and Mexican citizens. This agreement allows a prospective employee to work for the University on a temporary basis. Admission can be granted in three (3) year increments. Generally, there is not a finite time for TN status as it may be renewed each year as long as the Beneficiary's intent remains temporary.

Although a U.S. employer may sponsor the petition, currently The University does not file employer sponsored petitions for prospective TN employees. OISSS does not provide any advice in obtaining this status. Any College or Department that hires an Employee with TN status should communicate with their employee about their responsibility to renew the application timely to avoid potential gaps in employment.

The foreign national employee is responsible for obtaining and maintaining their TN status and to also provide the University with the proper documentation for work authority.

The hiring College or Department should be aware of the employee's expiration date and is responsible for ensuring valid work authorization and timely completion of the I-9 upon any new or extension application.

VI. TN STATUS
Some employees are granted work authorization by the filing of an I-765, Application for Employment Authorization and then subsequent issuance of an EAD.

Employees who file the I-765 application based on having a pending I-485 (Application to Register Permanent Residence or Adjust Status) may be granted work authorization in the form of an EAD until Adjustment of Status is granted.

In most cases an EAD is granted in one (1) year increments and renewal may be requested 120 days before the original EAD expires. It is the Employee’s obligation to file the renewal 120 days prior to the expiration and failure to do so may result in a loss of work authorization.

In this instance (pending I-485), the physical EAD is required in order to lawfully work in the U.S. As with any self-application the responsibility to ensure uninterrupted work authorization will fall completely on the employee. Additionally, all internal policies should be followed in regards to I-9 completion.

**OPT:** Optional Practical Training (OPT) will allow recent graduates in valid F-1 (student) status to work in a position directly related to their major field of study. Some students who graduate with a qualified Science, Technology, Engineering or Mathematics (STEM) degree may be eligible for a 17 month OPT STEM extension. This is a self-application. Individuals who qualify for a STEM extension must file for an extension of their EAD with USCIS before the current OPT work authorization expires. UT students should see UT’s F-1 Handbook for more information; students from other universities must consult with their graduating school’s immigration office for further information. Students in their first year of OPT must receive the physical EAD before they begin employment. Unique and limiting regulations may apply to students with a pending STEM extension.

**Maintenance of an EAD or any other self-application is the sole responsibility of the employee.** Neither OISSS nor the University file these applications and failure to file them in a timely manner may result in the individual falling out of status and/or losing work privileges. Due to the nature of the self-application, the sponsoring College or Department will be responsible for ensuring that their employee maintains valid status and work authority.
Resources

Department of Homeland Security: dhs.gov
U.S. Citizenship and Immigration Services: uscis.gov
U.S. Customs and Border Protection: cbp.gov
U.S. Immigration and Customs Enforcement: ice.gov
Department of State: state.gov

U.S. Embassies/Consulates in the U.S.
travel.state.gov

Foreign Embassies/Consulates in the U.S.
state.gov/s/cpr/rls/fco
embassy.org/embassies