



# EMPLOYMENT BASED IMMIGRATION HANDBOOK



**Center for International  
Studies and Programs**

The University of Toledo  
Center for International Studies and Programs  
2801 W. Bancroft Street  
Snyder Memorial, Room 1000  
Mail Stop 120  
Toledo, OH, 43606-3390  
Phone: 419.530.5268  
Fax: 419.530.4244  
Email: [maryam.sediqe@utoledo.edu](mailto:maryam.sediqe@utoledo.edu)

Our institution attracts some of the most talented staff and faculty from around the globe. One of our goals at the Center for International Studies and Programs (CISP) 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. CISP 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,



Sara Clark  
Director, Center for International Studies and Programs



Sara Clark

### Staff Members

- Xinren Yu**, Assistant Director of CISP
- Tracey Hidalgo**, Assistant Director, OISSS
- Maryam Sediqe**, Assistant Director, Employment Based Immigration Services
- Jessica Bergman**, Immigration Compliance Data Coordinator
- Danielle Casiano**, Immigration Advisor
- Ana Fackelman**, Student Services Coordinator
- Rafael Fay**, International Programs Coordinator
- Anne Bennett**, Program Manager

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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 and the Beneficiary of the H-1B petition. Please familiarize yourself with the contents of this handbook.

This document should serve as a baseline of the rules and regulations for an H-1B petition as it is a brief overview of terminology, processes and common issues. Although this handbook does address common questions, issues, and challenges, it is not totally comprehensive. Guidelines, regulations, and filing fees are subject to change as both the rules and interpretation of immigration law are constantly changing.

Please check with CISP for the most up-to-date information. The Center for International Studies and Programs invites you to bring any and all issues or questions regarding the H-1B process to our attention.

#### **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

**CISP:** Center for International Studies and Programs

**PERM:** Program Electronic Review Management

**PW:** Prevailing Wage

**PWDR:** Prevailing Wage Determination Request

**UToledo:** The University of Toledo

**USCIS:** U.S. Citizenship and Immigration Services

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#### **DISCLAIMER:**

##### **UNIVERSITY SPONSORED H-1B PETITIONS**

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

*The University of Toledo, CISP, and the sponsoring stakeholders cannot guarantee that an H-1B petition will be approved. Moreover, the University, CISP, and the sponsoring stakeholders 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.1 H-1B NONIMMIGRANT STATUS

The H-1B is a temporary nonimmigrant 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).

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 nonimmigrant statuses (i.e., F-1 or J-1) the H-1B Beneficiary does not have to maintain nonimmigrant intent. At the expiration of a J-1 or F-1 status the presumption is that the individual will return to their home country. The H-1B form is a *Petition for a Nonimmigrant Worker*; however, U.S. Immigration law carves out an exception to its 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 to a timeline 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 two months to determine a prevailing wage for the position, and subsequently USCIS may take up to six months, or at times longer (processing times are subject to change), to adjudicate a petition. **Therefore, CISP 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 CISP 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 (\$2500, a fee that is subject to change at the discretion of USCIS), this does not necessarily guarantee an approval and does not speed up DOL processing time. 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 can be 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:** *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 Residency 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 they were out of the U.S. for one year preceding their 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 six 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 six-year maximum.

The College or Department should be aware that the submission of H-1B materials to CISP 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 six years, the Department is responsible for contacting CISP **at the end of the fourth year** of their prospective 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.

### **Summary of Department Responsibilities and Potential Adverse Penalties**

Please remember that the H-1B is an employer sponsored petition, and the sponsoring Colleges and Departments assume significant responsibility 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 Department forms can 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 H-1B Forms for Departments and Employees to find our list of forms: <https://www.utoledo.edu/cisp/international/h1bvisas/h1bformsdocsfees.html>.

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 debarment 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 following federal rules and H-1B regulations and state laws and internal policies, which include but are not limited to 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 Stakeholder 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 CISP.*

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 or Department, CISP, and the prospective employee.

## I.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 is 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; and*
- 4) *The employer can show that the organization normally requires a bachelor’s degree for this type of position.*

**Note:** *A job may not be automatically deemed a “specialty occupation” by USCIS standards solely based on the fact that The University of Toledo states that it requires a bachelor’s degree or above for the 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 proposed employee. The University of Toledo’s position description and requirements will be a deciding factor in 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. *See website for current fees.*

**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 CISP to verify if this exception is applicable.*

## I.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 UToledo as it relates to recruitment and hiring of a prospective employee. Once this is completed, CISP can discuss the H-1B application process. It is important to remember that USCIS processing alone may take up to 6 months (USCIS processing time varies). This does not include CISP 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 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 CISP with a requested start date that 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 of their prospective employee’s current status and work authorization. Regardless of whether or not the employee is currently on H-1B, F-1, J-1, or other status, as the H-1B is an **employer sponsored petition**, the stakeholder should familiarize themselves with their prospective employee’s ability to have lawful work authorization. Remember, CISP is not aware of the stakeholder’s intention to hire a prospective employee in the future, and our office does not assume an H-1B will be automatically extended, as in some instances extension is not desired. **For any H-1B petition (Extension, Amendment, or New), the obligation to initiate the H-1B petition will be the responsibility of the sponsoring stakeholder.**

**H-1B TIMELINE**

**STEP 1: INFORMATION GATHERING**

The College or Department will be responsible for gathering all the requisite documents and information requested in both the Department and Employee Checklists. See our website for downloadable forms:  
<https://www.utoledo.edu/cisp/international/h1bvisas/h1bformsdocsfees.html>

**Department:**

This checklist includes all relevant documents and the three CISP forms below.

**1) H-1B Department Request Form**

**2) H-1B Actual Wage Explanation and Memo** (not required for positions controlled by a collective bargaining agreement: AAUP, AFSCME, CWA)

**3) Export License Review Form**

**Employee:**

H-1B Employee Checklist (include each item in the Employee Checklist as an attachment in the email.)

**1) H-1B Employee Request Form**

**Incomplete forms will not be accepted and will cause a delay in the petition process. Please make sure each form and item in the checklist is individually attached to the**



**submission email. Please read all the instructions carefully. Electronic signatures are sufficient.**

The College or Department should provide to CISP the signed Department and Employee forms listed above as well as the requested documents. **If items for submission are not received in a timely manner, a delay in processing time may result.**

**Actual Wage Explanation and Memorandum:**

The College or Department will be responsible for filling out the Actual Wage Explanation and the Actual Wage Memorandum. 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.

**Determining the Actual Wage:** The actual wage is the wage paid to all other employees in similar positions, with similar qualifications and experience. The Department must be able to justify the salary based on experience and education. See C.F.R. 655.731(a) (1) Code of Federal Regulations.

**Grant Funded Positions:** As to the Actual Wage set for research activities and/or other positions that may rely on grant funding. The DOL states that it is unacceptable to set a wage based solely on the fact of what funds are available in a grant.

A sponsoring College or Department may not successfully argue that the Actual Wage is what the grant affords; the DOL has historically stated this is **not** a legitimate argument.

**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 all UToledo employees in the same occupation or similar occupations. This includes 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. CISP only requires submission of the Actual Wage Explanation and Actual Wage 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.

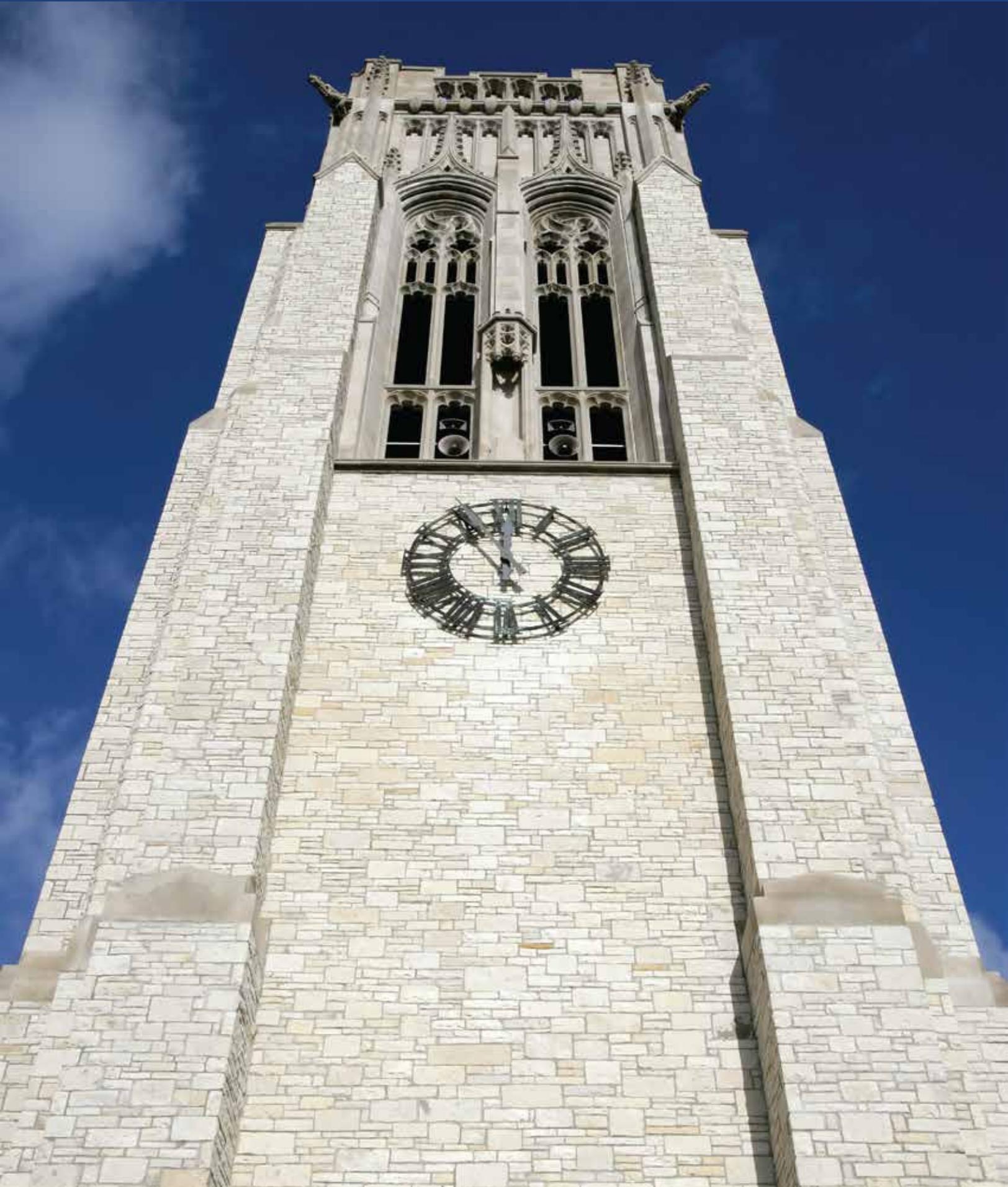
**Continuing Obligation to Update Adjustments of Actual Wage Data after H-1B Hire:**

Where the Department hires another employee in the same occupation, after 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 CISP 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 and submitted to CISP 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 CISP prior to it going into effect.





## STEP 2: CISP REVIEW AND ANALYSIS OF FORMS AND PROCESSING FEES (2 TO 3 WEEKS)

Upon receipt of all application materials and required fees, CISP 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, CISP has adopted a first in first out procedure—meaning that although we will do our best to process those petitions that have upcoming deadlines, CISP’s procedure is to process those petitions that were received timely and provided in advance first.*

## STEP 3: DETERMINING REQUIRED WAGES (1 TO 8 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, CISP advises that the University submit a Prevailing Wage Determination Request to the DOL, who will in return provide the prevailing wage for the occupation at UT. This action is generally referred to as “Safe Harbor”; in the event of a wage investigation as to the salary paid to the employee, the wage generally will not be challenged.

As the DOL provides the Prevailing Wage based on the job description, the University should take care to ensure that the description and details of the proposed employment are completely accurate and list all the minimum requirements and qualifications required for the position. This process may take up to 60 days to receive a response from the DOL, and UToledo must delay the filing of the H-1B until the determination is received.

Alternative routes exist outside submitting a Prevailing Wage Determination Request to the DOL, which may avoid the 60-day processing time but will also come with risk. If the sponsoring College or Department chooses to use an alternative survey (if applicable) or to have CISP suggest the Prevailing Wage, the wage rate may be subject to challenge by the DOL.

In the event the DOL were to perform a wage investigation and determine that the H-1B employee had not been paid the Prevailing Wage, the sponsoring **College or Department will be liable for paying back wages and potentially other civil penalties or fines.** This would include but not necessarily be limited to the difference between wages actually received by the Beneficiary during the validity period and the DOL wage determination for the position. Please contact CISP directly for more information.

**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

# I. H-1B OVERVIEW

business days (excluding weekends, holidays, and days the business is closed) in two conspicuous/unobstructed, obvious different locations at each place of employment and/or building where the employee will work.

CISP will provide the Posting Notice and initiated LCA to the Department to physically post. After 10 consecutive business days, the sponsoring Department will sign the posted notice and then mail it to CISP. The location of each posting and the date the Notice was posted (hung) 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 and notice should be provided to a filing representative.

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

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

## **STEP 6: PREPARATION OF THE H-1B PETITION (3-4 WEEKS)**

Once the LCA is certified, CISP 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 (USCIS processing time varies. Please check with CISP.)**

The current processing time for H-1B petitions may take up to 6 months or at times longer (processing times are subject to change). If the petition is premium processed, USCIS will

process the petition within 15 calendar days of receipt. However, premium processing does not necessarily ensure approval or 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.

## **I.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 UToledo 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 UToledo 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 six months prior to the current expiration or initiate the process prior to a contemplated change in job title, job location, job 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.

### **Portability:**

*(H-1B Employee from another employer)* In this case, there is a prospective employee who currently holds valid H-1B status from another employer. In this circumstance, UToledo will be able to either “port” from the previous employer’s H-1B or file a new H-1B extension as long as the new H-1B petition is received by USCIS prior to the expiration of the employee’s existing H-1B. The prospective employee must also hold valid H-1B status and not have engaged in unlawful employment in the past.

Careful planning by the prospective employee must take place. As there is no grace period upon the termination of an H-1B (i.e., separation from the prior employer), steps should be taken to maintain uninterrupted and continuous employment. This is important for both prospective employees and employees who may separate from UToledo.

Upon the filing of the petition and subsequent arrival of a Receipt Notice, a prospective

employee may work up to 240 days or until adjudication of the H-1B, which may or may not result in approval.

**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 CISP to discuss these situations. The Extension and Portability rules stated above do NOT apply in Change of Status applications.



## II. H-1B: ONGOING OBLIGATIONS OF SPONSORING DEPARTMENTS

### II.1 U.S. DEPARTMENT OF LABOR AND THE LABOR CONDITION APPLICATION (LCA)

The sponsoring College or Department will have ongoing H-1B obligations throughout the approval period. 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 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 CISP prior to the adjustment.

### II.2 CHANGES IN THE H-1B EMPLOYEE’S POSITION

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

**\*\*\* Notify CISP 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 CISP prior to any changes in the employment, including but not limited to changes in job title, requirements, qualifications, or duties, hours, pay, promotions, demotions, and work location (worksite 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 worksite 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 CISP when unsure.*

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

**Note:** *The Department will be liable to pay reasonable costs of transportation for the employee to return to their home country of residence if UToledo 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 of if it is voluntary. The H-1B status ends upon separation/termination of the employee. The College or Department*



## II. H-1B: ONGOING OBLIGATIONS OF SPONSORING DEPARTMENTS

*must notify CISP so that we may notify USCIS of the separation.*

**\*\*\* Change in salary or change in job title:**

CISP should be contacted before any significant change of salary occurs, which includes but is not limited to a salary or benefit reduction and major promotion. The salary that was originally submitted must be guaranteed for the timeframe 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 that was not listed on the original H-1B petition, the University may have to file a new LCA and H-1B petition. When the physical location of employment will change, the sponsoring College or Department must contact CISP prior to the change in job location regardless of 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, it 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, leaves of absence are not condoned.

**\*\*\* Travel:** If the employee plans to travel abroad, please notify CISP before travel.

*Note: The sponsoring Department and College is responsible and obligated to request an Amendment of the H-1B Petition when material*

*or substantial changes occur regarding the position. The sponsoring stakeholder should ensure that if any of the above changes are contemplated, measures are in place to discuss with CISP prior to them going into effect. CISP strongly recommends making this request about 60 days before an intended change.*

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

### II.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.

The hiring College, Department, and/or Principal 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 that 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 and Sponsored Programs, and this must happen prior to the employee receiving work authorization.

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 Principal 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.**

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. Department and College can download the fillable Export License Review Form from CISP website and

follow the directions on the first page to complete the form:  
<https://www.utoledo.edu/cisp/international/h1bvisas/pdf/oiss-deemedexportcert-20190418.pdf>



## III.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 or embassy directly 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 re-entering 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 nonimmigrant 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 Notice of the H-1B petition. *The date on the I-94 controls the authorized length of stay but does NOT grant work authority.*

**Note:** *The electronic arrival/departure record can be obtained by entering requested information at <https://i94.cbp.dhs.gov>. The employee is responsible for maintaining valid status during their stay.*

## III.2 EMPLOYEE INFORMATION AND RESPONSIBILITIES

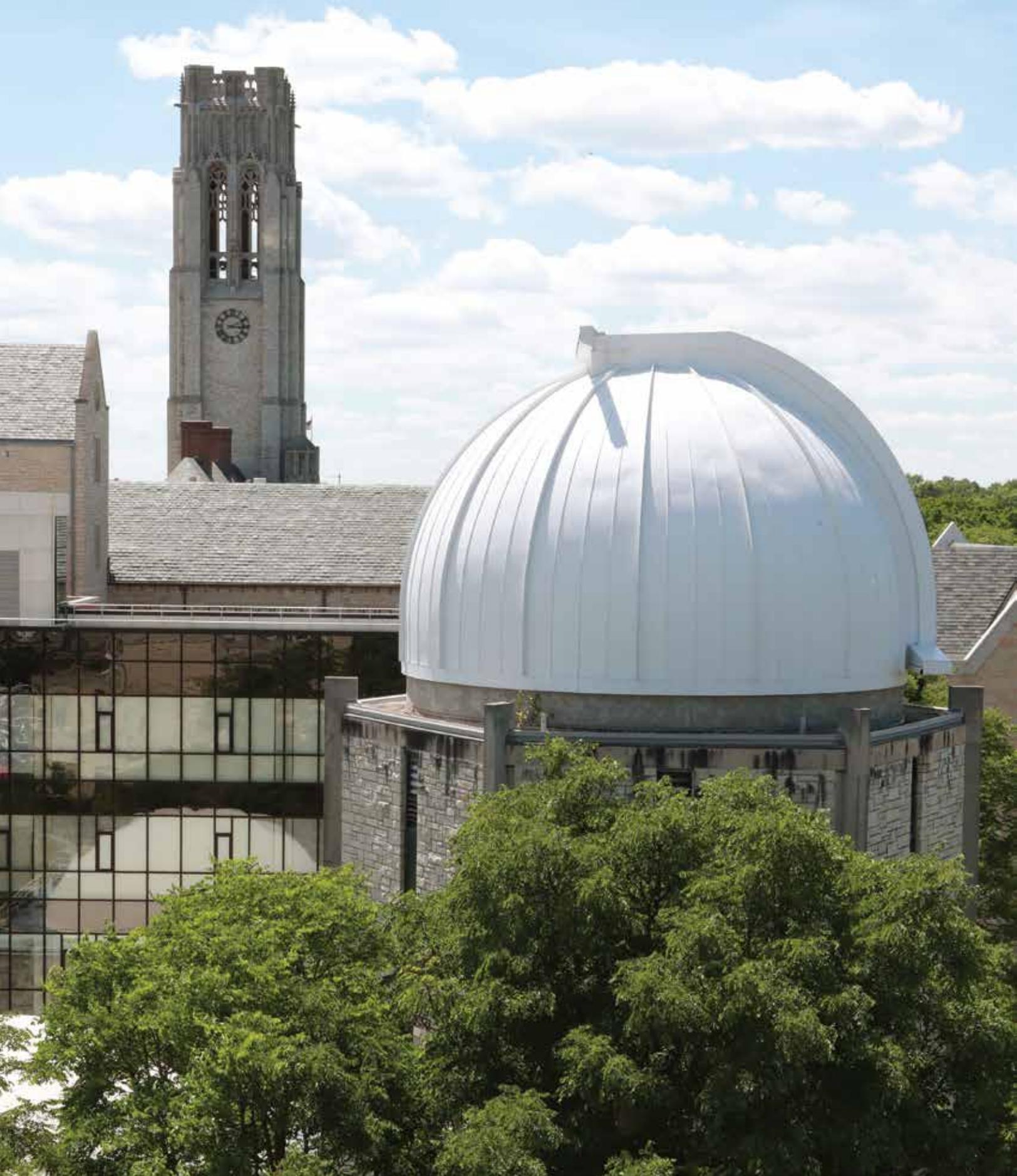
Although the H-1B is an employer sponsored petition, each Beneficiary must comply with all USCIS rules, as failure to do so may affect the Beneficiary's legal status to remain in the U.S. and may affect future filings of the Beneficiary. Please be aware of the following:

**\*\*\* Substantial changes in employment:** H-1B petitions are very specific and limited to the specialty occupation that was approved at the time of filing the original H-1B. Changes to the salary, physical location of employment (i.e., 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 change into something that was not intended, please discuss with CISP. 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 <https://www.uscis.gov/addresschange>

**\*\*\* Employee separation or termination:** When a termination or separation from UToledo 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 that grants valid status has been filed, the foreign national is immediately out of status. Employees who will be separating from the University should coordinate with their Department, HR, and CISP prior to termination of employment.

**\*\*\* Porting:** When transferring to another employer, in order to maintain status, the employee must continue working for UToledo 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 UToledo.



### III. H-1B INFORMATION AND REGULATIONS FOR THE FOREIGN NATIONAL EMPLOYEE

**\*\*\* 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 CISP. Having a valid I-94 and valid I-797 is required to maintain authorization.

**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 re-entry into the U.S. after a trip abroad, if the Beneficiary’s passport expires prior to the H-1B end date, Customs and Border Protection may short end the I-94 “admit until” date. Example: An H-1B employee is granted work authorization for three 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” 5/14/2016 in the Beneficiary’s passport. This results in the employee’s status expiring on 5/14/2016 despite their H-1B approval notice being valid through 7/1/2017. Here, the employee should discuss with CISP immediately the options available for extending status. **It is the employee’s obligation to maintain lawful status throughout the entire validity period.**

**\*\*\* 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:** The employee should maintain a valid passport and prepare to renew the passport in a timely manner.

**\*\*\* Finite Six-Year period:** USCIS allows an H-1B Beneficiary to work for a total of six years. Keep in mind that H-1B status and work authorization ends at the end of the six-year period.

**\*\*\* Outside lecturing or other type of consulting work:** An employee may not receive a benefit, honorarium or other monetary gain for giving outside lectures. An employee “may” be reimbursed for travel and reasonable expenses, although it is advisable to contact CISP 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 they are 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:** When the employee has a Change of Status (from H-1B to another status) through a self-petition or otherwise, please



inform CISP of this change of status prior to it going into effect.

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

#### III.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 CISP.* Travelling abroad (including Canada and Mexico) will always pose certain risks for delay. If travelling outside the U.S., the documents listed below are typically needed to re-enter:

\*\*\* Valid passport (valid for at least six 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 their 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 CISP 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 CISP prior to any travel abroad.

#### III.4 H-1B APPROVAL DOCUMENTS AND OBTAINING H-1B STATUS (Employee Abroad vs. Employee in U.S. [Change of Status (COS)])

If USCIS approves an H-1B petition for UToledo, the I-797 Approval Notice will be mailed to CISP. CISP will contact the employee or Department to arrange pick up or 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 CISP. 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. CISP 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 or waived any INA 212(e) two-year home residency requirement (if applicable—relevant only for those who have worked/studied under the J-1 classification).

Individuals with an approved H-1B petition will receive an I-94 card attached to the bottom of the I-797 Approval Notice which will indicate their new H-1B status.

#### III.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., they 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, CISP 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. Form I-539 and Form I-539A (to be submitted for each H-4 co-applicant) is filed

by the dependent or their guardian, and the H-4 (or their guardian) will be responsible for completing the form, paying the USCIS filing fee of \$370 per family (subject to change at the discretion of USCIS), maintaining legal status and following USCIS rules and regulations.

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

#### Employment authorization for certain H-4 Dependent Spouses:

Certain H-4 Dependent Spouses of H-1B Nonimmigrants who are seeking employment based lawful permanent resident status can file I-765 Application for Employment Authorization. Please refer to the USCIS website for Eligibility Requirements and How to Apply:

<https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/employment-authorization-for-certain-h-4-dependent-spouses>.



## IV. PERMANENT RESIDENCY PROCESSING

### IV.1 OVERVIEW OF PERMANENT RESIDENCY

Individuals may obtain Permanent Residency (PR) several ways: through employment based petitions, family sponsored petitions, marriage to a U.S. Citizen, Asylum, Diversity Visa Lottery and certain self-petitions, which are commonly EB-1A 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-1B), National Interest Waiver (NIW) petitions (EB-2), or Permanent Labor Certifications (EB-2 and EB-3). Note: NIW can be a self or employer sponsored petition.

The College or Department should contact CISP 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 CISP 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 two 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 four of a Beneficiary's H-status.*

### IV.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 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 CISP with questions.

### IV.3 EXEMPTIONS TO LIMITATIONS OF STAY (6 YEARS) AND 7TH YEAR H-1B EXTENSIONS (AC21)

One way to extend H-1B status beyond six years is through employment based sponsorship that begins 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) AC21 §106(a). This means the University may request an H-1B extension beyond the normal six years if one 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 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 sixth year expiration date, then it is strongly recommended that the College or Department begin the Labor Certification process **by the end of the Beneficiary's fourth year of H-1B status.**

#### IV.4 GENERAL REQUIREMENTS OF A LABOR CERTIFICATION (PERM)

The process begins with the University seeking a labor certification through the Department of Labor using their Program Electronic Review Management system (PERM). Section 212(a)(5) of the Immigration and Nationality Act (INA) essentially states that a U.S. employer may hire 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 Counsel to assess the likelihood of the Labor Certification;
- 2) Analysis of minimum requirements of the prospective employment, internal policies, and review of the prospective position by Human Resources. The College or Department must submit to HR 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 ability to fulfill employer obligations in the future (the University must

have the ability to pay the promised wage in the future);

- 5) The offered position may never be specifically tailored for any prospective employee;
- 6) The prospective employee must meet the qualifications of the occupation;
- 7) Prevailing Wage Determination obtained from DOL;
- 8) Specific Employment Based Recruitment Steps/Advertisements and proper documentation of efforts by the Department;
- 9) Competitive Recruitment Report (faculty sponsorship) or Recruitment Report (PSA or staff positions). Any recruitment must demonstrate a good faith testing of the U.S. labor market;
- 10) Notice of Filing;
- 11) Date of Offer and Advertisement;
- 12) Drafting, Review, and Filing of the PERM/Labor Certification.

**Note:** *Each PERM application has additional steps that should be discussed with the OAG's Appointed Counsel. In addition, 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 Appointed Counsel. CISP 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

## IV. PERMANENT RESIDENCY PROCESSING

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 develops will be contingent on the facts of the application.

**Record Retention Five Years:** The sponsoring College or Department should keep records of their recruitment and other steps taken for a minimum of five 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 two 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 one year 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 eight 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, the University has 30 days to respond to the Department of Labor requests. **The DOL's decision to grant or deny may take over one year, and possibly two years. In the scenario where a PERM has not been filed with 365 days of H-1B time remaining, the AC21 rules will not allow an H-1B extension.**

Because 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 six years may not be possible if not filed timely. Sponsoring stakeholders must keep realistic contingencies in mind and draft proposed employment offers accordingly.

### IV.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."

#### IV.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 applicant was selected pursuant to a competitive recruitment and that they were the most qualified applicant. Appointed Counsel will make a recommendation on what positions qualify for Special Handling and how to proceed if it is unclear.

The general summary of steps for Special Handling includes but is not limited to the following:

- 1) Obtaining a Prevailing Wage Determination;
- 2) Printed advertisement of the 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 that applied for the position.

The PERM must be submitted within 18 months of selection of the candidate.

Special Handling requires extensive documentation of the recruitment process by the Department. The sponsoring Department will have to provide copies of the advertisements along with evidence that it was advertised and posted properly. The Department must also provide a detailed report regarding the number of total applicants and the lawful reasons why those applicants were not as qualified as the foreign national.

The sponsoring Department is charged with ensuring that rules and regulations regarding recruitment are followed and properly documented. Consultation with the assigned attorney will be available. The College or Department shall be responsible for keeping copies of all advertisements, postings, resumes and other supporting documentation for at least five years.

#### **IV.5(b) LABOR CERTIFICATION: BASIC RECRUITMENT (NON-TEACHING PROFESSIONAL POSITIONS) (EB-2)**

Prior to filing a PERM or Labor Certification Application, the University must demonstrate that it adequately tested the labor market in the preceding six months without finding any qualified U.S. workers. This test ensures 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 from the standard for special handling. In this scenario, UToledo shall not sponsor the Labor Certification if any minimally qualified U.S. worker applies for the posted position.*



## IV. PERMANENT RESIDENCY PROCESSING

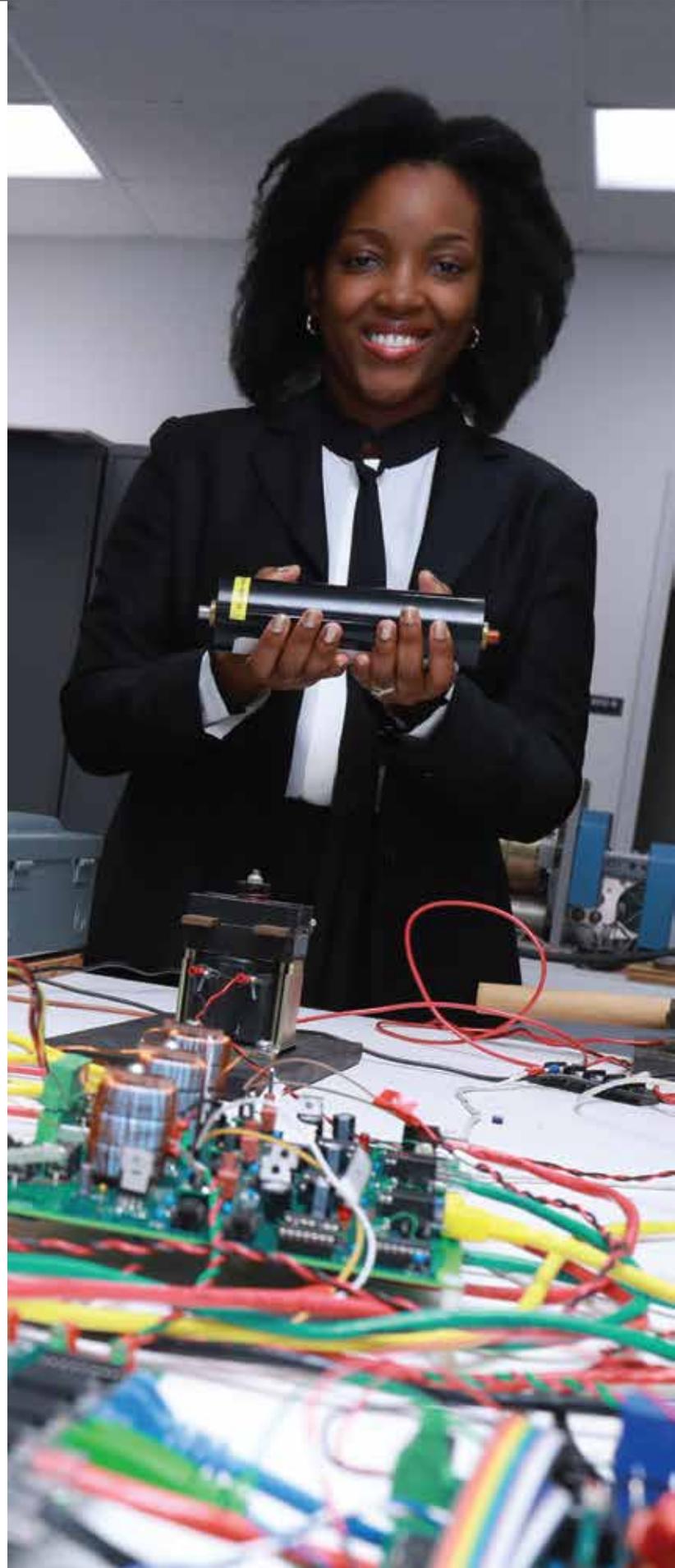
The general summary of steps includes but is not limited to the following:

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

**Note:** Documentation and recording these recruitment steps are 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 (seven 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 they were rejected. Please discuss with Appointed



*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 time remaining; best practice calls for the process to begin with a prospective Beneficiary having at least two years of H-1B time remaining.

The College or Department should keep documentation and all evidence of the filing for at least five 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.

#### **IV.6 EB-1B 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 their 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 three 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 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 foreign national’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:

<https://www.uscis.gov/working-in-the-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 CISP.

## V. CONRAD STATE 30 PROGRAM

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 Departments 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-year home country residency requirement for the Beneficiary, resulting in the University’s ability to file an H-1B petition for the prospective employee.

CISP 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 and 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 and be solely responsible for deadlines and aware of 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 sponsors 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.





### **O-1 Visa: Individuals with Extraordinary Ability or Achievement**

The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements.

Pursuing an O-1 visa status is only recommended when J-1 or H-1B visas are not feasible. A sponsoring Department must initiate the O-1 process and request the CISP office to review and determine eligibility. Pursuing the O-1 visa depends on the individual's achievement and whether they meet the USCIS criteria.

For general eligibility requirements, application process, period of stay/extension of stay and dependents of O-1, please use the following link:

<https://www.uscis.gov/working-in-the-united-states/temporary-workers/o-1-visa-individuals-with-extraordinary-ability-or-achievement>.

For USCIS Policy Manual please use the following link:

<https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4>.

### **O-1A Beneficiaries in Sciences, Education, Business, or Athletics**

**In support of an O-1A Petition for a Nonimmigrant Worker (Form I-129), the petitioner must establish that the beneficiary:**

- Has extraordinary ability in the sciences, education, business, or athletics, which has been demonstrated by sustained national or international acclaim;
- Has achievements that have been recognized in the field through extensive documentation;

- Is coming to continue work in the area of extraordinary ability.

**The supporting documentation for an O-1A petition must include evidence that the beneficiary has received a major internationally-recognized award (such as the Nobel Prize) or at least three of the following forms of evidence:**

- **Recipient of Prizes:** Documentation of the beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- **Outstanding Memberships:** Documentation of the beneficiary's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- **Published Material Written by Others:** Published material in professional or major trade publications or major media about the beneficiary, relating to the beneficiary's work in the field for which classification is sought, which must include the title, date, and author of such published material, and any necessary translation;
- **Judge of Others:** Evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization for which classification is sought;
- **Original Scholarly Research Contribution:** Evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field;
- **Authorship:** Evidence of the beneficiary's authorship of scholarly articles in the field, in professional journals, or other major media;
- **Essential/Critical Employment Status:** Evidence that the beneficiary has been

employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation; or

• **High Salary:** Evidence that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, as evidenced by contracts or other reliable evidence.



## VII. TN STATUS

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-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. CISP 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 the employee's 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.





## VIII. EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)

Some employees are granted work authorization by the filing of an I-765, Application for Employment Authorization, and 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-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; 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 regard 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. Students should see The University of Toledo'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 CISP 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.







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## Center for International Studies and Programs

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**CISP**

**CENTER FOR INTERNATIONAL STUDIES AND PROGRAMS**

2801 W. Bancroft St.  
Snyder Memorial, Room 1000  
Toledo, OH 43606-3390  
Phone: 419.530.5268

[www.utoledo.edu/cisp](http://www.utoledo.edu/cisp)  
[www.facebook.com/utcisp](https://www.facebook.com/utcisp)  
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