



EMPLOYMENT OF CITIZENS OF FOREIGN COUNTRIES

West Chester University

I. PURPOSE:

The intent of this policy is to establish consistent, practical guidance for both hiring managers and citizens of foreign countries seeking temporary or permanent instructional and professional employment with West Chester University.

II. DEFINITIONS:

A. H1-B/E-3 Visas: The H1-B visa is a temporary, non-immigrant visa classification assigned to a foreign national which authorizes him or her to work lawfully in the United States for a period of time not to exceed six (6) years. The E-3 is a new temporary, non-immigrant visa classification assigned to Australian citizens, authorizing sponsored, professional employment in the United States for an initial period of two (2) years. Extensions of stay can be granted in increments indefinitely. These types of working visas are typically appropriate for tenure-track and professional non-instructional positions.

B. Permanent Residency: A status granted by application and under specific circumstances to permit certain foreign citizens to live permanently and work indefinitely within the United States without restriction.

C. Green Card: The card is an identity card showing evidence of the card holder's permanent residency status. It has not been a green card since the 1960's but continues to be referred to by this misnomer. The color has changed from green to blue to pink to its present complexion of white back with a green stripe. The card incorporates the latest technology, containing microscopic portraits of all 42 Presidents, an embedded hologram of the Statue of Liberty and a laser-etched digital color photograph of the card holder to allow authorities to quickly establish whether or not it is authentic.



D. USCIS: The Office of United States Citizenship and Immigration Services is the federal office responsible for regulating naturalization and immigration in the United States. It is the former INS Office, which was renamed after it was reassigned to the Department of Homeland Security on March 1, 2003.

E. J-1 Visa: A temporary, non-immigrant visa assigned to a foreign national which authorizes the foreign national to participate in educational and work programs designed to promote the sharing of knowledge and skills in education, and the arts and sciences. The class is typically referred to as an “exchange visitor” visa. Its duration of stay is eighteen months. This visa is appropriate for non-tenure-track, visiting scholar types of programs.

F. TN-1 and TN-2 Visas: A non-immigrant, employer-sponsored worker class visa established under the North American Free Trade Agreement (NAFTA). The visas are typically of one year duration but extensions are pro forma and there is no statutory limit on stay. The visas are available to citizens of Canada (TN-1) and Mexico (TN-2).

III. POLICY:

West Chester University encourages the lawful hiring and retention of highly qualified citizens of foreign countries for both faculty and professional non-instructional positions at the University. Foreign faculty and professional staff play a vital role in supporting the University’s mission as well as helping to operationalize a University core value of establishing and maintaining a diverse learning and working environment. In recent years, the employment of citizens of foreign countries has become highly complex in terms of both processing requirements and compliance with various federal immigration and homeland security laws. Guidance is necessary for both managers and prospective employees to facilitate timely and smooth employment processes.

IV. PHILOSOPHY:

The lawful ability to work in the United States is a condition of all employment at the University. Consequently, employment of foreign citizens is considered conditional employment until a valid working visa is obtained. No citizen of a foreign country may present himself or herself for work until verification of eligibility for employment is ascertained through the West Chester University Human Resources Office’s I-9 verification process. The University recognizes its obligations as an employer to pay certain petition and advertising fees associated with visa petitions, labor certification processes, and permanent residency applications. The University will cooperate in providing associated documentation for the same. However, the onus is on the individual to accept primary responsibility for understanding the processes and associated timelines for filing, obtaining, and maintaining eligibility to work lawfully in the United States. Moreover, the decision to live and work in the United States permanently is an individual’s choice, and not an employer’s. Associated costs should be borne accordingly. The University is not responsible for guiding, instructing or administering follow-up procedures required for eligible foreign employees to adjust their status to that of permanent resident.

V. PROCEDURES:

- A. Search Committees: A copy of this policy should be provided by the Human Resources Office to each professional or faculty search committee at the beginning of the search. It is imperative that search committees, who are considering the hire of foreign nationals, broach the subject of ability to work lawfully in the United States with them as part of the screening or interview process. Consultation with the Human Resources Office is also advised in terms of understanding the length of processes like the H1-B visa process. No offer of financial support beyond what is outlined in this policy should be made. Offers of employment to foreign nationals should also include the specific understanding that employment is conditional on the ability to work lawfully in the United States beginning the date for which the employment is intended to begin.
- B. Legal Representation: PASSHE's Office of General Counsel is the University's official legal representative for all employee immigration matters. If a foreign national chooses to retain legal counsel to facilitate the filing of a working visa or permanent residency application, it must be made clear that this private legal counsel cannot represent the University to government agencies. Private counsel may be engaged by foreign nationals to obtain legal advice and counsel on their own behalf or to pursue self-sponsored immigration applications, provided that the University is not named as the petitioner. Costs associated with self-sponsored immigration applications or private immigration advice are the responsibility of the individual and not the University. The Human Resources Office will inform the employee and the employee's legal representative of this in writing upon notice that the employee has obtained private legal counsel.
- C. H1-B/E-3 Visas (the University as Petitioner): When an offer of employment is accepted by a foreign national to work for the University, the foreign national will be referred for visa processing to the University's comprehensive immigration processing service (Immigration Support Services, Inc.). Since the foreign national is merely the beneficiary of this visa and the employer is the statutory petitioner, the University will pay all fees associated with the petition. The cost of the process will be borne by the department into which the foreign national has been hired. The foreign national may not elect to retain private counsel for the purpose of filing an H1-B petition on the University's behalf.
- D. Visa Classes and Permanent Residency Applications (the Foreign National as Petitioner/Applicant): In instances where the University is not the petitioner or applicant for the filing, as in the case of some classes of visas and permanent residency applications, the foreign national is free to use the University's comprehensive immigration processing services or private legal counsel, but all costs associated with the processing except employer advertising fees will be required to be paid by the foreign national.
- E. Sponsorship of Permanent Residency Exceptions: In instances where the University views the retention of a foreign national as critical to the success of the University, the University may choose, at its sole discretion to sponsor a foreign national for permanent residency. Such sponsorship requires the approval of the Dean and Provost for faculty and the Division Vice President for professional

staff sponsorship. A sponsorship exception must be processed through the University's comprehensive immigration processing service and the University will bear all associated fees.

- F. Role of the Human Resources Office: The Human Resources Office will coordinate all referrals by departments/department heads for immigration work processed through the University's comprehensive immigration processing service. The Human Resources Office will also manage all communications between PASSHE's Office of General Counsel and the University on employee immigration matters.

- G. Termination of Employment Prior to Expiration of H1-B Visa: By virtue of an employer representative signing an H1-B visa petition to sponsor employment for a foreign national, the petition is creating a contingent legal obligation to pay for the foreign national's transportation to their last foreign residence if employment is terminated for any reason prior to the visa expiration date. This cost will be borne by the department from which the individual's employment status is being terminated.

- H. No-Shows: In instances when the University has sponsored a foreign national for professional or faculty employment and that individual does not report for work or expresses the intention not to accept employment, the USCIS must be notified immediately and a request to revoke the working visa must also be made. The Human Resources Office handles these communications with USCIS. Chairs or department heads who become aware of these kinds of circumstances must give immediate notice to the Human Resources Office.

- I. Disclaimers: The University disclaims any warranty of success in terms of approval of working visa petitions and permanent residency applications.