

# UC Davis Academic Personnel Manual

## Recruitment

### Section UCD-530, Recruitment and Appointment of Aliens (Noncitizens)

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#### I. Purpose

This section outlines responsibilities and procedures for the sponsorship of individuals who are neither U.S. citizens nor permanent residents relative to the academic recruitment and appointment process. These procedures also apply to those cases where a nonresident alien is uniquely qualified for a research position but requires a change in immigration status that will allow temporary or permanent employment (see Policy & Procedure Manual Section 380-14).

#### II. Definitions

- A. Immigrant (Permanent Resident)--a foreign national who has been lawfully admitted to the U.S. for permanent residence, but who is still a citizen of another country. An immigrant is issued an Alien Registration Receipt card (Form I-551 or "green card") by the U.S. Immigration & Naturalization Service (INS).
- B. Nonimmigrant Alien--a foreign national whose reason for coming to the U.S. involves a temporary stay that will end when its purpose has been accomplished.
- C. Visa--a stamped entry in the passport that enables the foreign national to enter the U.S. under conditions specified for the visa classification. Visas are issued by a U.S. consulate abroad.

#### III. Responsibilities

As with any recruitment or appointment, all campus search and recruitment requirements must first be satisfied; refer to Section UCD-500, Academic Recruitment Guidelines, or Personnel Policies for Staff Members, Policy 21, Appointment. The alien candidate, the hiring department, Services for International Students & Scholars (S.I.S.S.), and the Office of the Provost must then work cooperatively to ensure that the campus can benefit from the unique talents and skills of certain noncitizen scholars.

- A. The candidate and the recruiting department are responsible for initiating the review of the candidate's eligibility for an appropriate visa status through consultation with S.I.S.S. (See Policy & Procedure Manual Section 380-64 for further information regarding the various visa classifications.) Once eligibility and status have been determined, the candidate and the department must compile materials as directed by S.I.S.S. that document that her/his credentials and the proffered position meet the requirements for the desired immigration classification in relation to U.S. Department of Labor (DOL) and INS regulations. The department is also responsible for the preparation of INS and DOL applications/petitions as directed by S.I.S.S. as well as for INS filing fees and any expenses (such as long-distance telephone calls, faxes, or express mail charges) incurred by S.I.S.S. in connection with the case.
- B. The responsibilities of S.I.S.S. are: to facilitate the University's invitation and employment of international faculty and researchers; to advise the department regarding University and Federal regulations pertaining to the employment of foreign nationals; to provide complete information regarding various visa classifications and employment authorization; to provide instruction and

assistance concerning the appropriate application procedures; to monitor the processing of materials by government agencies; and to provide advocacy as necessary. When necessary, S.I.S.S. will make the final determination as to the appropriateness of a particular visa classification, petition, or strategy.

- C. Upon receipt from the department of the requested documentation, S.I.S.S. will provide government authorities with sworn certification on behalf of the University. All actions will be within the framework provided by the letter and the spirit of State and Federal law.

#### **IV. International Scholar Fee-For-Service**

- A. Cost-sharing fees designed to cover a portion of the cost of the range of professional services provided by S.I.S.S. will be charged to the academic department or program that hosts or hires the international faculty member or researcher where official visa documents or immigration petitions are required. This fee structure does not apply to nonimmigrant students nor, at this time, to individuals who qualify to come to UCD in the B-1, TN, or WB status. (See Policy & Procedure Manual Section 380-64.)
- B. The fees are assessed only when the initial Form IAP-66 is prepared for the J-1 status, when the H-1B or O-1 visa petition is filed, or when a permanent visa petition or application for alien employment certification is filed. Subsequent J-1, H-1B, or O-1 extensions will be processed at no additional charge. There is no charge for departmental consultations prior to the invitation of international faculty and researchers. Information on fees is available from S.I.S.S.

#### **V. Time Frame**

Departments must allow sufficient time for processing visa applications, petitions, or immigration applications. Procedures should begin at least 3 months in advance for J-1 visa applicants (VII-A, below), at least 6 months in advance for H-1B visa applicants (VII-B, below), and as far in advance as possible for applicants for permanent residence (VI, below). Obtaining an immigrant visa or permanent resident status may take from 6 months to 2 years, depending on individual circumstances.

#### **VI. Permanent Employment of Nonresident Aliens (Immigrant Status)**

UCD sponsorship for permanent resident status may be sought for a foreign national who is proposed for permanent UCD employment and who may or may not already hold temporary (nonimmigrant) resident status.

- A. In order to qualify for University sponsorship for legal permanent resident status, the proffered position must be full-time and permanent, meet the prevailing wage standard, and require professional skills. Tenured or tenure-track faculty positions normally meet these requirements. Those positions that do not qualify for such sponsorship include postgraduate researchers, visiting postdoctoral scholars, and lecturers. In addition, only those positions directly engaged in teaching or research will be sponsored.
- B. To establish that a grant-funded research position may be considered permanent for the purpose of sponsorship for permanent residence, the following conditions must be met:
  - 1. Funding to support the position must be available for at least 3 years.
  - 2. There must be a reasonable expectation that the funding will be renewed beyond the 3-year maximum.

3. The department must intend to continue to employ the foreign national for more than 3 years (assuming funding).
  4. The foreign national must intend to remain at UCD for more than 3 years.
- C. University sponsorship includes the assistance of S.I.S.S. to the academic department in the preparation and filing of a labor certification and/or permanent visa petition with the State Employment Development Department (EDD), DOL, and INS, and to the alien and her/his accompanying immediate family members in the preparation of documents for applications to adjust status to legal permanent resident. S.I.S.S. will represent the University in all legal matters related to immigration situations. Private immigration attorneys will not be authorized to represent the University in any situation, and individual faculty and department representatives should not sign immigration petitions, attorney authorizations, or letters to INS without consulting S.I.S.S.
- D. Foreign nationals who have been offered qualifying permanent UCD employment are generally eligible for permanent resident status under one of the following employment-based immigration categories.

1. Outstanding Professors and Researchers

This category does not require alien employment certification via DOL, but does require at least 3 years of experience in the academic field and international recognition in the field as evidenced by at least two of the following:

- a. Documentation of receipt of major international prizes or awards for outstanding achievement in the academic field.
- b. Documentation of membership in associations in the academic field that require outstanding achievements of their members.
- c. Material in professional publications written by others about the foreign national's work in the academic field.
- d. Evidence of the individual's participation, either individually or on a panel, as the judge of the work of others in the same or allied academic field.
- e. Evidence of the foreign national's original scientific or scholarly research contributions to the field.
- f. Evidence of the foreign national's authorship of scholarly books or articles in scholarly journals with international circulation in the field.

2. Professional with Advanced Degrees or the Equivalent

This category requires the filing of an application for alien employment certification with DOL via EDD. The burden of proof is on the U.S. employer to show that the foreign national's qualifications are uniquely suited to the job specifications and to show that a thorough search has been made for equally qualified U.S. citizens. When a bona fide search reveals that the most qualified candidate (teaching positions) or only qualified candidate (research positions) does not have permanent resident status, the process for

immigrant status is initiated by filing an application for alien employment certification, which involves the following:

- a. The foreign national and employer must file applications and supporting documentation with DOL via EDD.
  - b. A job description must be submitted to detail all specific duties to be performed and the training, experience, and skills that the department deems essential in the person holding the position. The job description must match the description used in the job search.
  - c. Extensive documentation of recruitment efforts must be submitted. Documentation must include proof that the application is being filed within 18 months of the candidate's selection (teaching position) or within 6 months of recruitment (research positions). (Much of the necessary documentation will be obtained in the course of complying with campus recruitment guidelines.)
- E. Once the eligibility of the individual for permanent resident status has been established through one of the categories described above, he/she and any accompanying immediate family members will formally apply to INS for adjustment of status to permanent resident (if already in the U.S.) or to a U.S. consulate abroad for an immigrant visa (when outside the U.S.).
- F. Procedures

<b>Responsibility</b>	<b>Action</b>
Department	<p>1. Consults with S.I.S.S. to determine strategy, time frame, or any barriers to sponsoring employee or candidate for permanent resident status.</p> <p>2. Submits to S.I.S.S. a Permanent Residence Request form (available from S.I.S.S.).</p>
S.I.S.S.	<p>3. In accordance with established policy, makes determination regarding University support of individual cases.</p> <p>4. Notifies department by confirmation letter of approval of request form; meets with department representatives to determine appropriate procedure and discuss strategy; provides department with appropriate forms and direction for preparation of required documentation.</p> <p>5. Meets with the foreign national to discuss procedures, time frame, and individual situation.</p>
Foreign national	<p>6. Provides complete information to department/S.I.S.S. regarding U.S. immigration and employment history for self and family; agrees to consult with S.I.S.S. well in advance of international travel plans during application and adjustment of status process.</p>
Department	<p>7. Completes forms and compiles supporting materials; returns all to S.I.S.S. for review.</p>

S.I.S.S.	<p>8. Reviews forms and supporting documentation.</p> <p>9. Submits petition and supporting documents to relevant government agencies; monitors progress.</p> <p>10. After application for alien employment certification and/or visa petition has been approved, provides information and assistance to foreign national regarding preparation and filing of application for adjustment of status to permanent resident (when foreign national is in U.S.) or for obtaining immigrant visa (when foreign national is outside U.S.); monitors progress of application.</p>
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**VII. Temporary Employment of Nonresident Aliens (Nonimmigrant Visa)**

A nonimmigrant visa classification may be sought for an alien who is proposed for a visiting or temporary appointment and who does not already have permanent (immigrant) status. A new nonimmigrant visa petition, a change of status to a different visa classification, or a legal transfer of J-1 program may be required for individuals proposed for a temporary appointment at UCD who are already in the U.S. in nonimmigrant status. The right to temporarily live and engage in professional employment in the U.S. as a nonimmigrant is relatively simple to obtain for qualified foreign nationals. When permanent residence is a goal, however, one temporary visa classification may be more appropriate than another, and the situation should be fully discussed with S.I.S.S. before proceeding with the initial temporary invitation.

**A. J-1 Exchange Visitor Visa**

1. The J-1 visa is issued to: professors or researchers for 3 years or less; specialists for 1 year or less; short-term scholars for 6 months or less; or students who are sponsored by the U.S. or other governments or by certain international organizations, or who participate in certain exchange programs, for the period of their course of study plus any period of approved academic training employment. (See Policy & Procedure Manual Section 380-64 for more information on the J-1 exchange visitor classification.)
2. A J-1 exchange visitor may not be a candidate for a tenure-track position.
3. Procedures

Responsibility	Action
Department	<p>1. Obtains from S.I.S.S. a Request for IAP-66 (Certificate of Eligibility for Exchange Visitor [J-1] Status).</p> <p>NOTE: New UCD students obtain Form IAP-66 through the admission process.</p> <p>2. Completes all items on request form; obtains foreign national's signature on health insurance memorandum of understanding and, if necessary, documentation of her/his funding; returns request to S.I.S.S. at least 10 weeks before the individual's</p>

	anticipated arrival at UCD.
S.I.S.S.	3. Prepares Form IAP-66 and sends with prearrival information to originating department.
Department	4. Transmits Form IAP-66 and prearrival information to visitor 7 weeks before visitor's arrival.
Foreign national	5. Presents Form IAP-66 to U.S. consulate with application for J-1 visa.
Department	6. Refers visitor immediately upon arrival to S.I.S.S. for check-in and orientation.
S.I.S.S.	7. Conducts check-in and orientation; provides support services to visitor and family throughout her/his stay at UCD.

B. H-1B Temporary Worker Visa

1. An H-1B nonimmigrant visa petition will be filed by the University only for temporary faculty positions or for those professional research positions that are full-time, i.e., 100% appointments. When there is an interest in subsequently pursuing permanent employment and permanent resident status for the individual, it is particularly appropriate to utilize the H-1B status, which accommodates this "dual intent," rather than the J-1 status, which is specifically restricted to temporary appointments.
2. The foreign national's admission to the U.S. in H-1B status is based on a petition filed with INS by a particular employer for a specific job. Additional employment, or a substantive change in the initial employment, is not possible unless a subsequent petition has been approved by INS. Prior to filing the H-1B petition with INS, the employer (S.I.S.S.) must file a Labor Condition Application with DOL, confirming certain information pertaining to the wages and working conditions of the proposed employment.
3. The employing department must post a notice of the intention to file a Labor Condition Application and keep on file, and upon request make available for public examination, documentation to support the Labor Condition Application and other information pertaining to the position and to the visa petition.
4. Procedures

Note: Comparable procedures are followed in the appointment of a Mexican citizen in the TN status as established by the North American Free Trade Agreement (NAFTA). See Policy & Procedure Manual Section 380-64 and VII-D, below.

<b>Responsibility</b>	<b>Action</b>
Department	1. Contacts S.I.S.S. regarding prospective temporary worker in a speciality occupation.
S.I.S.S.	2. In accordance with established policy, makes determination regarding University support of

	<p>individual cases.</p> <p>3. If approved, sends department H-1B petition packet and directions for completing petition and related forms and compiling supporting documentation.</p>
Department	4. Prepares applications and related documentation according to S.I.S.S. instructions.
S.I.S.S.	5. Submits Request for Prevailing Wage to EDD, Labor Condition Application to DOL, and H-1B petition to INS; monitors processing by each agency and provides advocacy as necessary; notifies department of approval at each step; forwards notice of approval for H-1B petition to department.
Department	<p>6. Forwards notice of approval to foreign national to facilitate visa application if he/she is outside of U.S.; provides copy of Labor Condition Application to individual no later than first day of employment.</p> <p>7. Refers foreign national to S.I.S.S. for check-in and orientation.</p>

C. O-1 Temporary Worker of Extraordinary Ability

1. The O-1 classification applies to an individual who has extraordinary ability in the sciences, education, or business that has been demonstrated by sustained national or international acclaim, who is coming to the U.S. to work in the area of extraordinary ability, and whose admission will substantially benefit the U.S. The services to be performed must involve a specific scientific or educational project that is appropriate for an extraordinary or highly technical person due to the complexity of the project and in which the O-1 will play a critical role. An O-1 petition may be approved for up to 3 years.
2. The spouse and dependents of the O-1 are admitted in the O-3 status and may apply to INS for employment authorization.
3. A petition for an O-1 alien of extraordinary ability must be accompanied by evidence of sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:
  - a. Receipt of a major internationally recognized award, such as the Nobel Prize, or
  - b. At least three of the following forms of documentation:
    - 1) Documentation of the foreign national's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.
    - 2) Documentation of the foreign national's membership in associations in the field for which classification is sought that require outstanding achievements

of their members, as judged by recognized national or international experts in their disciplines or fields.

- 3) Material in professional or major trade publications or other major media relating to the individual's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material and any necessary translation.
  - 4) Evidence of the foreign national's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.
  - 5) Evidence of the foreign national's original scientific, scholarly, or business-related contributions of major significance in the field.
  - 6) Evidence of the individual's authorship of scholarly articles in the field, in professional journals, or other major media.
  - 7) Evidence of the display of the foreign national's work in the field of artistic exhibitions or showcases.
  - 8) Evidence that the foreign national has been employed in a critical or essential capacity for organizations or establishments that have a distinguished reputation.
  - 9) Evidence that he/she has commanded and now commands a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- c. Written evidence of consultation with the appropriate peer group, i.e., an association or entity with expertise in that area, and signed by an authorized official of the organization, describing the alien's ability and achievements in the field of endeavor and stating whether the position requires the services of an individual of extraordinary ability.

4. Procedures

<b>Responsibility</b>	<b>Action</b>
Department	1. Consults with S.I.S.S. regarding individual situation.
S.I.S.S.	2. Makes determination of appropriateness and viability of O-1 petition; provides to department materials and directions for completing forms and compiling supporting documentation.
Department	3. Completes forms and compiles supporting materials; returns all to S.I.S.S. for review.
S.I.S.S.	4. Reviews petition and supporting materials; submits petition to INS; monitors progress; provides advocacy as necessary; notifies department of approval;

	forwards notice of approval.
Department	5. Forwards notice of approval to facilitate visa application if individual is outside U.S.; refers foreign national to S.I.S.S. for check-in and orientation.

D. TN professional status under NAFTA

1. Qualified Canadian or Mexican citizens may enter the U.S. to engage in professional activities in one of the specified professional occupations, which includes university professors and scientists in specified fields. A complete listing is available from S.I.S.S. Entry is granted for employment with a specified employer for a maximum initial period of 1 year, which can subsequently be extended indefinitely in yearly increments.
2. A Mexican citizen must obtain a nonimmigrant TN visa stamp at a U.S. consulate based on a previously approved petition to INS by the prospective employer. This TN process is similar to that for the H-1B (see VII-B, above).
3. A Canadian citizen seeking TN professional status presents at the U.S. port of entry evidence of Canadian citizenship, a letter offering employment in professional status, evidence of qualifications, and evidence of compliance with licensing requirements if appropriate.
4. The spouse and dependents of the TN are admitted into the U.S. in TD (trade dependent) status and may not be employed unless they obtain a change of status.
5. Procedures (for Canadian citizens)

Responsibility	Action
Department	1. Forwards following materials to S.I.S.S. well in advance of proposed entry of prospective TN:  a. Letter describing employment (see S.I.S.S. for sample). b. Curriculum vitae or current resume. c. University check for U.S. \$50 payable to INS. d. Manila envelope addressed to foreign national with department return address and mail ID number.
S.I.S.S.	2. Forwards materials to foreign national with prearrival information and instructions; forwards copies of materials to port of entry as appropriate.
Department	3. Upon foreign national's arrival, refers her/him to S.I.S.S. for check-in and orientation.

**VIII. Potential Bars/Delays to Obtaining the Desired U.S. Temporary or Permanent Residence Status'**

- A. The individual circumstances of a foreign national the University wishes to employ or invite may preclude or delay obtaining the desired temporary or permanent status. Examples of such

situations include:

1. The foreign national may, as a condition of current or previous J-1 status, be barred from adjusting status because he/she is subject to the 2-year home country residence requirement. (See Policy & Procedure Manual Section 380-64.) Departments or individuals may consult with S.I.S.S. regarding possible waiver of this requirement.
  2. Foreign nationals who have been out of legal status or have worked illegally in the U.S. may have to pay a penalty before adjusting status to permanent resident, or they may have to complete their processing at a U.S. consulate abroad. Individuals who have been out of status for an extended period may even be barred from reentering the U.S. for a period of years.
- B. Where such impediments to employing or inviting an international professor or researcher to UCD seem to exist, it is important to consult with S.I.S.S. regarding possible remedies before abandoning the planned activity. Consultation with S.I.S.S. prior to making an invitation or offer of employment to a foreign national is recommended in all cases.

#### **IX. References and Related Policies**

- A. Office of the President: UC Group Insurance Regulations.
- B. Academic Personnel Manual Sections 500, Recruitment/General, and UCD-500, Academic Recruitment Guidelines.
- C. Personnel Policies for Staff Members, Policy 21, Appointment.
- D. Policy & Procedure Manual:
  1. Section 380-06, Employment Eligibility Authorization.
  2. Section 380-14, Employment of Aliens.
  3. Section 380-64, Conditions of Visas for Alien (Noncitizen) Students, Scholars, and Visitors.
  4. Section 380-65, Income Tax Withholding and Reports of Earnings for Citizens and Resident Aliens.
  5. Section 380-66, Income Tax Withholding and Reports of Earnings for Nonresident Aliens.
  6. Section 380-76, Honorarium Payments.