

Sam Houston State University
A Member of The Texas State University System

Finance & Operations Human Resources Policy HR-11 Hiring
International Workers

SUBJECT: Policy Statement and Procedures for Hiring International Workers

PURPOSE: This policy provides Sam Houston State University (SHSU) guidance for hiring international workers in conformity with federal immigration laws.

POLICY: This policy applies to the recruitment, hiring, or processing of federally required documents for employment of international workers. Procedures for international student employment and exchange visitor programs (such as J-1 visas) are established and implemented by the Office of International Programs.

1. DEFINITIONS:

- a. Non-immigrant Visa – A visa issued to an individual with permanent residency outside the United States (U.S.) to work in the U.S. on a temporary basis. An example of a nonimmigrant visa is a H-1B, temporary, non-immigrant Visa for qualified specialty occupations in fields requiring highly specialized skills or knowledge. A H-1B Visa requires employer sponsorship and is issued for an initial period of up to three (3) years, and may be renewed for a maximum of six (6) years.
- b. Permanent Immigrant Visa (permanent residency) – An employment-based visa issued to an individual to reside permanently in the U.S. Examples include EB-1 (employment-based immigrant workers with first preference) and EB-2 (second preference).
- c. Prevailing Wage - The average wage paid to similarly employed workers in terms of the position's classification, which includes job duties and skill level. Wage data can be found on the U.S. Department of Labor Office of Foreign Labor authorized Foreign Labor Certification Data Center website (<http://www.flcdatacenter.com>).

2. ELIGIBILITY FOR HIRE AND SPONSORSHIP

a. Eligibility for Hire

- i. In accordance with the Immigration Reform and Control Act (IRCA) and applicable federal regulations, SHSU only employs individuals authorized to work in the U.S. SHSU does not permit individuals awaiting employment authorization or those with an expired work authorization to work or serve as volunteers.
- ii. Unless state or federal law requires that a position be filled by a U.S. citizen, such as the terms of federally funded research, citizenship status shall not be a factor considered in the selection of an applicant for employment. A hiring department may not request documentation of an applicant's work eligibility until a contingent offer of employment has been made. All offers of employment with SHSU are contingent on the applicant's ability to provide employment eligibility documentation required by federal immigration laws.

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1. Any offer of employment for an international faculty candidate is contingent on the ability of the prospective employee to provide employment authorization on or before the first day of the semester of employment.
 2. Any offer of employment for an international staff candidate is contingent on the ability of the prospective employee to provide employment authorization on or before the applicant's first day of employment.
 3. New employee sponsorship requires that the Office of International Programs has all required documentation from the department and from the new employee six (6) to eight (8) weeks prior to the employee's intended start date.
- iii. The head of the hiring department proposing employment of an international worker shall ensure the proposed employment complies with all applicable U.S. export control laws and regulations.

b. Eligibility for Employer Sponsorship

- i. Positions eligible for sponsored Non-immigrant Visas at SHSU include
 1. Tenured or tenure track faculty, or
 2. Staff positions with primary responsibilities in the areas of Science, Technology, Engineering, and Mathematics (STEM).

Any request for an eligibility exception for sponsoring an international worker for a Staff position without responsibility in a STEM discipline must be made in writing through the hiring department's administrator/chair, dean, the division Vice President, and sent to the Office of International Programs.

- ii. Positions eligible for permanent residency petitions: University sponsorship for permanent residency is reserved for international workers appointed to full-time, tenured and tenure track faculty positions.
 1. An employee is limited to one permanent residency petition with the type of petition determined by the University.
 2. Tenured or tenure track positions must be advertised for at least thirty (30) calendar days in a national professional journal to satisfy regulatory requirements for sponsorship of university teachers (see 20 CFR § 656.18). When a position is not advertised for a minimum of thirty (30) calendar days, it requires re-recruitment as a part of the petition for permanent residency.

3. SPONSORSHIP PROCESS

Employment sponsorship is governed by federal law and coordinated for SHSU by the Office of International Programs. It is a lengthy, potentially multi-year, process involving significant costs and documentation from the applicant, department, and college.

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- a. The hiring department will notify the Office of International Programs of the selection of an international worker.
- b. The salary must conform to the Prevailing Wage for the occupational classification.
- c. Responsibility for Sponsorship Fees and Expenses
 - i. The sponsoring department is responsible for paying the following fees, in amounts not to exceed:
 - 1. employer filing fees,
 - 2. premium processing fees, if required to meet SHSU employment timelines, and
 - 3. employer legal fees as required by federal law.

Any request for SHSU payment of premium processing fees must be initiated by the department and include written justification. The department must route the request for premium processing through the dean, the division Vice President, and then to the Office of International Programs.

- ii. The international worker is responsible for paying:
 - 1. applicant fees required by federal law,
 - 2. any legal fees not required to be paid by the employer,
 - 3. fees for dependent applications, if any, and
 - 4. premium processing fees, if desired by the employee, and not paid by SHSU.

Additionally, an international worker is solely responsible for legal fees of any attorney or counselor the individual may hire to represent the international worker's personal legal interests.

- iii. The sponsoring department should contact the Office of International Programs for an estimate of fees.
- d. To initiate the sponsorship process, the hiring department will notify the Office of International Programs in writing of the hiring department's intent to sponsor the international worker. The written notification must include:
 - i. The employment offer letter (for faculty positions, this letter must be signed by the President).
 - ii. A justification memo requesting approval of the petition. The memo must include the following:
 - 1. The employee's name, title and current or proposed salary;

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2. The visa(s) requested (H1-B and/or Permanent Residency).
3. How the sponsorship is in the University's best interest; generally, that sponsorship enables the institution to meet critical scientific, teaching, public service, and/or other needs;
4. The department's funding source (FOAP) committed and available to support the position and to pay the employer required petition filing fees/legal fees;
5. The department's agreement to provide documentation required to support the petition(s) (i.e., information for the Prevailing Wage determination and labor certification) upon request and on an ongoing basis.

The hiring department will submit the justification memo through applicable administrative approval process, including the division Vice President's Office, before sending to the Office of International Programs .

- e. Once an employment petition is approved, the prospective employee is responsible for filing the visa application. Appointment arrangements for U.S. embassies and consulates, and additional security clearances that may be required, may cause unpredictably long delays in securing the proper visa to enter the U.S. The individual visa holder is responsible for obtaining status in a timely manner and maintaining status for initial and continued employment at SHSU.
 - f. Hiring departments must promptly notify the Office of International Programs of any change in the employee's position, duties, or employment status, including the termination of an international worker's employment. Substantive changes in the employee's position or duties can affect the employee's visa status and require a new visa petition.
4. AUTHORIZED IMMIGRATION ATTORNEYS AND SIGNATORIES
- a. The Office of International Programs coordinates employment-based non-immigrant petitions and permanent residency petitions with immigration attorneys approved by, and under contract with The Texas State University System (TSUS) in accordance with procedures established by the Texas Attorney General.
 - b. Privately retained attorneys do not have the authority to represent SHSU.
 - c. SHSU international worker petitions must be prepared by the University's duly authorized agents, to include approved immigration counsel and those employees authorized by the SHSU President to execute immigration documents.
5. EMPLOYMENT OF INTERNATIONAL WORKERS FOR WORK OUTSIDE OF THE U.S.
- a. Prior to hiring or assigning an employee to work outside the United States, the supervising authority must contact the Office of International Programs.

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- b. The Office of International Programs may refer the supervising authority to other designated offices (Payroll, Office of Research and Sponsored Programs, Office of General Counsel) for assistance in determining whether such a hiring could raise potential foreign tax, export control, or other legal issues.

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