



# **Handbook of Operating Procedures**

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## **HIRING OF FOREIGN NATIONALS**

### **A. Purpose**

The purpose of this policy is to inform units of The University of Texas-Pan American that employ foreign nationals of University procedures for processing permanent resident and temporary worker visa petitions.

### **B. Persons Affected**

This policy applies to individuals of the University who are responsible for hiring employees and/or processing appointments.

### **C. Policy**

The policy of the University is:

1. In order to comply with the provisions of the Immigration Reform and Control Act, the University may not employ individuals who are not authorized to work in the United States. Moreover, petitions for temporary employment and permanent residency must serve to support the teaching and research mission of UTPA and must fully comply with the regulations of the Department of Labor and the various new immigration bureaus that are part of the Department of Homeland Security.
2. Immigrant/permanent resident petitions (“green card”) for foreign nationals to work at UTPA generally are limited to specific faculty positions and may be petitioned for under the categories of “Outstanding Professor/Researcher” or through “Special Handling Labor Certification” (standard labor certification applications are not included). Job title eligibility for both H-1B and immigrant/permanent resident status is shown in the table below.
  - a. Exception to Policy

When it is determined to be in the best interest of UTPA, extensions may be filed for employees already employed at UTPA and hired in H-1B status prior to the date of this policy memorandum even if their titles are not on the list.
  - b. Non-qualifying Positions

Because of the complexity of the immigration and labor laws, consideration in submitting immigrant petitions for positions that do not qualify under the categories listed below will be determined on a case by case basis by special request through the applicant’s dean and appropriate vice president (in coordination with the Provost). UTPA will not pay the legal fees of applicants who have retained outside attorneys.



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### c. Consultations

Professorial, research and support staff should feel free to consult with Human Resources about any questions related to the immigration status of prospective and current foreign employees. It is especially critical that staff consult Human Resources regarding tenure track positions, since some individuals may have been in a status that requires them to return to their home country for a period of time (or to receive a waiver of the requirement) before petitioning for H-1B or immigrant/permanent resident status. The immigration advising chart entitled, "The University of Texas Pan American Job Eligibility for H-1B and Immigrant/Permanent Resident Status," may prove a helpful reference for any discussions with the Human Resources staff.

- 1) To avoid problems that could arise when an individual's employment eligibility is not known, the person responsible for hiring will need to discuss the issue of work authorization with the prospective employee early in the process.
- 2) To ensure the protection of a job applicant's rights, prior to recruitment and interviews, consult with the Office of Human Resources for appropriate guidance.

**The University of Texas Pan American  
Job Eligibility for H-1B and Immigrant/Permanent Resident Status**

	<b>Job Title</b>	<b>Eligible for H-1B</b>	<b>Eligible for Permanent Residency</b>
Academic Titles:	Professor	X	X
	Associate Professor	X	X
	Assistant Professor	X	X
	Instructor	X	
	Senior Lecturer	X	
	Lecturer	X	
Research Titles:	Research Scholar	X	
	Research Associate	X	
	Research Coordinator	X	
	Postdoctoral Fellow	X	



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### **D. Definitions**

**Premium Processing.** This is an expedited process that requires additional fees.

### **E. Responsibilities**

1. To ensure compliance with applicable federal regulations, UTPA has delegated authority for filing temporary worker petitions (H-1B status), and for signing labor certifications and immigrant/permanent resident petitions to designated individuals at the UTPA Office of Human Resources. Applications prepared by a representative outside the University will not be sponsored or accepted by the University.
2. For temporary assignments and/or those that require student status as a condition of employment, employment authorization must be granted by a designated school official from the Office of International Admissions and Services.

### **F. Procedures**

#### 1. Employment Petition

Early notification of the staff in the Human Resources Office is very important in order to plan for the timely arrival of new hires. Even with Premium Processing, the application process can take 5 – 7 weeks because of the complexity of the process and the Department of Labor requirements that must be met. Filing fees and legal fees that the employer is required to pay will be paid for by the sponsoring department. The filing fees for dependents will not be paid by the University; the individual will be responsible for paying dependent fees. For an estimation of these fees, please contact Human Resources.

#### 2. Documentation Supporting Petition

Applications for H-1B temporary worker status require submission of a Labor Conditions Application to the Department of Labor and an I-129 form (Specialty Worker Petition) as part of the required documentation. The departmental representative is responsible for providing the required information to the Office of Human Resources. For H-1B petitions, the hiring unit must be paying, or be prepared to pay, the prevailing wage for the position, as determined by the Texas Workforce Commission.

#### 3. Visa Applications

Once the employment petition has been approved, the visa application may also present challenges. Appointment arrangements for U.S. embassies and consulates, additional security clearances based on citizenship and gender, plus extra scrutiny of those coming to work in areas listed on the expanded Technology Alert List (a list of



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sensitive fields of research compiled by the federal government that require clearance before visa issuance), may cause unpredictably long delays in securing the proper visa to enter the United States. Divisional Vice President approval is required before an offer of employment is made to foreign nationals who will be employed at UTPA.

### **G. Review**

This policy shall be reviewed every five years or as legislation requires by the Director of Human Resources.