

MISSOURI SOUTHERN STATE UNIVERSITY POLICY

Policy #:		Effective:	February 2019*	Category:	
Name:	SPONSORSHIP OF FOREIGN NATIONALS FOR H-1B NON-IMMIGRANT AND PERMANENT RESIDENT STATUS				

1.0 PURPOSE

The purpose of the policy is to provide guidance to University employees regarding necessary policy information pertaining to the employment of and Sponsorship of Foreign Nationals for H-1B Non-immigrant and Permanent Resident Status.

2.0 SCOPE

University Employee Policy

2.0 POLICY

Missouri Southern State University values diversity among its faculty, students, and staff and has established this policy concerning the sponsorship of foreign national faculty members and candidates for tenure-track positions for H1B non-immigrant and Permanent Resident Status.

Initial H-1B Visa: If a foreign national requiring visa sponsorship to secure work authorization with the University wishes to accept an offer of a tenure-track position, the prospective faculty member may request that the University arrange to obtain H-1B non-immigrant visa status for the prospective faculty member. A foreign national requesting sponsorship who holds or has been offered a Non-tenure track position will be considered on a case-by-case basis. The H-1B visa category is designated for individuals coming temporarily to the United States to perform services in a specialty occupation. A specialty occupation is defined as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's degree or higher for the specific specialization. If the University chooses to make such arrangements, the University shall select legal counsel and pay the legal fees and filing fees incurred in obtaining the H-1B status for the prospective faculty member. If the prospective faculty member has a non-employee spouse and/or family members who require a derivative visa status, the legal fees and filing fees are the responsibility of the prospective faculty member. The University does not pay for the costs of obtaining a visa stamp at a consulate abroad. The University also does not pay for premium processing unless there is a compelling business need to do so as determined by the Provost and Human Resources.

H-1B Visa Extension: Once H-1B status has been obtained for a tenure-track (non-tenure track if approved) faculty member, and the faculty member has begun employment with the University, such faculty member may subsequently request that the University arrange to extend his or her H-1B status as needed. The initial H-1B visa can cover a period of up to three years. It can be extended for a maximum period of three additional years. In general, the maximum amount of time a faculty member may spend in H-1B status is six years unless certain steps have been reached in the permanent residence process. Requests for H-1B extensions should be made at least seven months in advance of the expiration of the faculty member's current H-1B status. If the University intends for the individual to remain a tenure track faculty member and chooses to make the requested arrangements for an extension of H-1B status, the University shall pay the legal and filing fees incurred in the extension of status. As with the initial H-

1B visa petition, the responsibility for extending the visa status of any non-employee spouse or other family members shall lie with the faculty member.

Permanent Residence (“Green Card”) Sponsorship: If a tenure-track faculty member has taught at the University for one (1) academic semester along with meeting or exceeding all expectations of a faculty member at MSSU, a request may be made for assistance from the University in obtaining lawful permanent residence, i.e., a “green card.” Permanent Residency is the legal right to live and work in the United States indefinitely. A request for assistance in obtaining permanent residence must be submitted in writing by the department chair to the Provost. The decision regarding sponsorship will be made on a case-by-case basis. If a decision is made to sponsor a tenure-track faculty member for permanent residence, the University will select legal counsel and work with the faculty member to determine the most appropriate process for the individual to obtain his or her green card.

Except in certain exceptional cases, the process used to pursue employment-based permanent residence for faculty members will involve the “special handling” labor certification procedures available to colleges and universities. There are typically three steps to obtaining permanent residency, described below:

- **Labor Certification:** The first step in the process generally will be obtaining an approved labor certification from the Department of Labor. The University will take primary responsibility for this step. Note that in order to take advantage of “special handling” labor certification procedures, which allow the University to establish that it hired a foreign faculty member after a competitive recruitment and selection process. The labor certification must be filed within 18 months after the faculty member’s selection for the position. The clock starts running when the search committee selects the faculty member for the position, not when the faculty member begins employment. As such, an initial request for assistance must be made by a faculty member within 10 months of the date listed on the offer letter. For example, if the faculty member was offered the position on January 1, 2018, a request for assistance in obtaining permanent residence should be made no later than October 1, 2018, to allow sufficient time to prepare and file a case by the 18-month deadline.

If the case is not opened in a timely fashion to allow filing within 18 months of receiving the job offer, a new recruitment for the position must be completed.

For non-faculty employees, the Labor certification is only appropriate for hard to fill jobs. It is much more complex and, in nearly all cases, requires new recruitment. Labor certification is a technical process and requires that a series of advertisements be placed in the local job market to see if there are qualified and available US workers who are willing and able to take the job. Market conditions or other labor issues may affect the timing of when a labor certification case can be prepared and filed. For hard-to-fill positions, sponsorship for non-faculty employees will be considered on a case-by-case basis. The University will work with outside counsel in this regard to evaluate the likelihood of whether a labor certification will be successful before moving forward with a permanent residency case. If the University determines to proceed with a permanent residency case, it will cover the legal fees and the filing fees for the employee’s PERM labor certification application, which is the first step of the process; however, the balance of the costs will typically be the responsibility of the employee. The additional steps are the I-140 petition, and the I-485 application. Medical exams, photos, and the educational evaluations are the responsibility of the employee. The University does not cover the cost of any non-employee dependent family members applying with the employee.

- **Dependent Family Members:** Dependent non-employee family members may need to have an I-539 petition filed on their behalf for an extension of their H-4 status. The University does NOT cover the legal fees or filing fees for non-employee dependent family members who may need petitions for H-4 dependent status filed on their behalf.
- **Filing the I-140 Immigrant Petition and the I-485 Adjustment of Status or Consular Processing:** Steps two and three include filing the I-140 Immigrant Petition and the I-485 Adjustment of Status (or consular processing of the immigrant petition). The primary responsibility for these steps lies with the faculty member. The tenure-track faculty member may request that the University provide financial assistance for the additional steps of this process. With respect to the filing of the immigrant petition and adjustment of status or consular processing, the Provost, in consultation with Human Resources, at his or her discretion, may agree to pay all attorney fees and government filing fees up to \$11,000 per tenure-track faculty member. In such cases, the faculty member shall pay any attorneys' fees incurred in the green card application process over \$11,000 and shall be responsible for all filing fees and attorneys' fees related to the green card application process for any non-employee spouse or other family members, even if the costs of the faculty member's case is less than \$11,000.

TN Visas: Individuals working in TN status can obtain a TN directly at a border crossing or from a US consulate abroad. The University does not typically pay for legal assistance in obtaining TN work authorization (either the initial petition or the extension), but may elect to do so in a particular case. If an employee is eligible for sponsorship for permanent residency, then in some instances, and upon recommendation of outside counsel, the University may provide assistance with a TN extension at the University's discretion on a case-by-case basis.

Cooperation: The faculty member or candidate must make reasonable efforts in obtaining documentation and information requested throughout the H-1B petition and green card application process to minimize processing fees.

Disclosure Obligations: Any individual making a request under this policy must disclose to the University at the time of the request anything regarding the individual or his or her family that may make any application or process under this policy problematic or unusually expensive. In such instances, the University reserves the right to deviate from this policy in whatever manner it deems appropriate.

Other Immigration Matters: There are other ways that an individual can obtain work authorization or immigration benefits in the United States. For example, an individual may marry a US citizen and obtain work authorization while a case is pending. Alternatively, an individual may obtain work authorization through temporary protected status or through their F-1 student status or even through a diversity visa lottery. Unless the employer is required to cover costs by the Department of Labor, please be aware that the University does not typically pay for other types of work authorization or immigration benefits, even though the individual is required to have valid work authorization to work for the university.

University Discretion: In deciding whether to provide assistance, the University will take into account all relevant factors including, without limitation, the need for the candidate, the faculty member's progress toward tenure, student evaluations, and the estimated expense to the University of providing the desired assistance. If the University agrees to assist the candidate or faculty member, the University may, in its discretion, discontinue its assistance in the non-immigrant petition or green card application process at any time.

3.0 HISTORY

This policy may be revised, edited, changed or removed at any time with or without notice to applicable individuals.