

RUTGERS POLICY

Section: 60.1.2

Section Title: Universitywide Human Resources Policies & Procedures

Policy Name: Employment of Foreign Nationals

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Errors or changes? Contact: policies@hr.rutgers.edu

1. **Policy Statement**

Rutgers encourages international educational exchange initiatives and recognizes the need for worldwide recruitment for both long- and short-term positions. The appointment of foreign nationals¹ is a complex matter involving three United States government agencies—the Departments of State, Homeland Security, and Labor. The university is constrained by the regulations of these agencies and by immigration acts enacted by Congress, including the Immigration Reform and Control Act of 1986, which sanctions employers for employing individuals not authorized to work in the United States.

2. **Reason for Policy**

To ensure departmental hiring authorities comply with Federal regulations concerning the employment of short- and long-term employees.

3. **Who Should Read This Policy**

All deans, directors, and hiring managers and employees who are foreign nationals.

4. **Related Documents**

- a. Employment Eligibility Verification Process
<http://uhr.rutgers.edu/uhr-units-offices/operations/i-9-and-e-verify>

¹This document uses the term “foreign national” interchangeably with the legal term “nonimmigrant” to refer to individuals who are not citizens or permanent residents of the United States. A “nonimmigrant” comes to the United States on a temporary basis for a specific purpose, e.g. to study, to tour, to take up temporary employment. We do not use the term “foreign national” to refer to an “immigrant,” who is authorized by the U.S. Department of Homeland Security to reside in the United States for an indefinite period of time as a “permanent resident.” Rutgers may employ a foreign national on a temporary basis using a nonimmigrant visa classification, may seek to employ a foreign national for an indefinite period of time by applying for an immigrant visa (also referred to as “permanent residence” or “green card”) for the individual, or may pursue both courses simultaneously by employing a foreign national on a temporary basis while the application for permanent residence is pending.

- b. Form DS-2019 request available online at: (<https://visarequest.rutgers.edu/Disclaimer.aspx>)
- c. 40.4.1 Travel and Business Meal Expense Policies and Procedures
<http://policies.rutgers.edu/view-policies/financial-management-budget-fiscal-risk-travel-audit-%E2%80%93-section-40#4>

5. **Contacts**

- a. Rutgers – New Brunswick, Center for Global Services, GAIA Centers, 848-932-7015
- b. Rutgers – Newark, Office of International Students and Scholars, 973-353-1427
- c. Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services, GAIA Centers, 973-972-6138
- d. Office of the Vice President for Academic Affairs, (848) 932-4889
- e. Office of the Vice President for International and Global Affairs, 848-932-1777

6. **The Policy**

60.1.2 EMPLOYMENT OF FOREIGN NATIONALS

A. Guidelines

Rutgers encourages international educational exchange initiatives and recognizes the need for worldwide recruitment for both long- and short-term positions. The appointment of foreign nationals is a complex matter involving three United States government agencies - the Departments of State, Homeland Security, and Labor. The university is constrained by the regulations of these agencies and by immigration acts enacted by Congress, including the Immigration Reform and Control Act of 1986, which sanctions employers for employing individuals not authorized to work in the United States.

The university's success in obtaining approval of its petitions is dependent upon its responsible adherence to law, regulation, and procedures. It is essential, therefore, that individual departments within the university and all those with authority to recruit and hire university employees understand the procedures, time frames, and restrictions involved in the appointment of foreign nationals and plan accordingly. This requirement applies to all appointments—those of unpaid visiting scholars as well as salaried instructional and non-instructional staff.

The university's personnel policies and practices are consistent with United States law and regulations governing the employment of foreign nationals, the issuance of certificates of eligibility, and the filing of petitions for both temporary and permanent employment. All appointments, at any level within the university, are contingent upon the individual obtaining the proper immigration status, and the term of employment may not exceed the duration of the employee's authorization and status.

1. University visa sponsorship is only reserved for certain categories of full-time employees and, with rare exception, for academic positions. The university only supports petitions that it authorizes and prepares. Petitions for temporary visas, labor certifications or permanent residence sponsorship submitted without the approval of the campus chancellor or the appropriate vice president are not binding and will not be honored. Privately-retained attorneys do not have authority to represent the university.
2. University sponsorship for permanent residence, i.e., applications for labor certifications and petitions for immigrant visas, are filed only for individuals holding full-time academic appointments on regularly budgeted permanent line positions. Rutgers does not sponsor grant-funded employees for permanent

residence. Labor certifications are authorized only if there is sufficient justification that the proposed employee is uniquely qualified through experience, skill, background or training to fill the available position.

- a. The department must submit evidence of a serious recruitment search along with the recommendations for labor certification. University approval for application for labor certification does not ensure reappointment or promotion to a tenured position.
- b. Immigrant (Permanent Resident) visa petitions other than those resulting from approved labor certification applications are authorized only if there is clear and convincing evidence that the proposed foreign national meets federal regulatory criteria for an "Outstanding Professor" or an "Alien of Extraordinary Ability."
- c. Approval for permanent visa sponsorship does not ensure reappointment or promotion to a tenured position. All university regulations and policies governing personnel actions are applicable to foreign nationals. Applications referred to in these guidelines do not replace normal university personnel procedures, but are in addition to them.
- d. In all cases, regardless of visa type, the department must conduct a search if normally required for the position and submit to the dean or director all usual appointment forms. For legacy UMDNJ staff positions, Rutgers Biomedical and Health Sciences departments must submit the candidate pool to Human Resources for review prior to submitting the forms to the dean or director to insure that no U.S. citizen who meets the minimum criteria has been overlooked. All candidates for legacy UMDNJ staff positions should file an electronic employment application regardless of the sources of recruitment. For courtesy appointments, the department must request that the dean or director issue an invitation letter. A copy of the approved appointment form as appropriate for the position, or a copy of the dean's invitation letter for a courtesy appointment, must accompany all visa application materials submitted by the department to the appropriate campus office. The appropriate campus office for New Brunswick and Camden cases is Rutgers – New Brunswick, Center for Global Services; for Newark cases, the appropriate offices are Rutgers – Newark, Office of International Students and Scholars or the Office of the Dean, Faculty of Arts and Sciences-Newark (FAS-N), depending on the type of application being filed. For Rutgers Biomedical Health Sciences cases, Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services is the appropriate office.

3. On July 1, 2103, the university will honor currently approved nonimmigrant visa status for legacy UMDNJ positions until such time that the status should expire. Any extension requests and extension approvals shall be made through the appropriate offices within the university. All extension approvals shall be based on the new policy as of July 1, 2013.

- B. Responsibilities of Departments Sponsoring Foreign Nationals. Departments initiating the sponsorship of foreign employees must work closely with either Rutgers – New Brunswick, Center for Global Services office for New Brunswick and Camden appointments, the appropriate Newark campus office for Newark appointments or Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services office for RBHS appointments.

The department chair or center/institute director bears primary responsibility for complying with university policy and federal regulations as they affect the employment of

foreign nationals hired by the department. The chair or director may choose to identify an administrative staff member in the department to function as liaison on procedural matters with the appropriate office listed in paragraph B., above. Responsibilities include:

1. Consulting with the appropriate office per paragraph B., above, prior to making a formal offer to a foreign national to ensure that he or she is eligible for the nonimmigrant classification necessary to accept the appointment for its full term;
2. Being aware of time frames for the type of visa requested and completing all request forms and documentation required for the visa within the necessary time frames;
3. Consulting with the dean or director's office, the chancellor's and/or the vice president's office as necessary to ensure accurate and thorough completion of required papers and to obtain required sign-offs;
4. Paying required United States Citizenship and Immigration Services (USCIS) fees for filing the university's portion of petitions;
5. Complying with university procedures and federal law by assigning the foreign national only those functions and responsibilities that are consistent with the appointment and authorized by the USCIS;
6. complying with university procedures and federal law as noted in instruction and application packets for nonimmigrant sponsorship, particularly as they apply to employer or visa sponsor responsibilities;
7. Ensuring that no prospective employees begin performing services until they have obtained all necessary government approvals to be employed at the university;
8. Ensuring that foreign national employees have adequate health insurance coverage for themselves and for any visa dependents they have in the United States;
9. Ensuring that foreign nationals have followed federal regulations and university procedures for completion of the federal Employment Eligibility Verification Form I-9;
10. Ensuring that all employees complete a "check in" procedure at Rutgers – New Brunswick, Center for Global Services office for New Brunswick and Camden, the appropriate Newark campus office or Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services office for RBHS;
11. Providing foreign national employees with personal courtesies such as housing assistance, information about the local community, and any other appropriate information or assistance the employee needs;
12. Providing foreign national employees with adequate office or laboratory facilities, including desk space, access to telephone services and access to department and university facilities; and
13. Notifying Rutgers – New Brunswick, Center for Global Services, Rutgers – Newark, Office of International Students and Scholars, Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services or Human Resources, as appropriate, when nonimmigrant employees on university sponsorship terminate a program and/or leave the university.

C. Visa Categories and Corresponding University Regulations

A nonimmigrant is a foreign national who comes to the university on a temporary basis to collaborate, engage in research, teach, or pursue some other professional objective. Once the university elects to appoint or invite a foreign national, it must determine what visa category is the most appropriate for the position and the intentions of the individual. This determination is based on such practical considerations as the type of appointment being made; the length of the proposed visit; how quickly the person is needed; the source of funding of the person's visit; the possibility that Rutgers may wish to employ the individual permanently; the current immigration status of the individual if already in the United States; and the visitor's country of citizenship.

To obtain most nonimmigrant visas, an alien must present to a United States consular officer abroad both the appropriate immigration forms issued by Rutgers and substantial proof of intent to return to a residence outside the United States. Evidence of such intent may include home ownership, a job which is being held, business ties, etc.

The visas most often used to permit a foreign national to be employed at Rutgers are the nonimmigrant J-1, H-1B, and practical training categories (F-1 and J-1) and the permanent resident visa based on employment at the university. Less frequently used are the TN for Canadian and Mexican nationals with professional positions and the B-1 visitor for business.

1. Exchange Visitors (J-1)

The J-1 visa is available to participants in an exchange program approved by the United States Department of State (DOS). The DOS expects J-1 visa holders to be in this country for the ultimate purpose of strengthening relations between the U.S. and their countries. For this reason J-1 visas are not appropriate, nor issued, for employees hired strictly to alleviate shortages of qualified U.S. personnel.

The J-1 visa has one great advantage of allowing the employment of dependents while in the United States. However, the J-1 also may carry some very serious restrictions that necessitate the exercise of caution in making a selection.

- a. As an authorized exchange program sponsor, the university issues a certificate of eligibility (Form DS-2019) to the prospective exchange visitor. This form enables the exchange visitor to obtain a J-1 visa. As a program sponsor, the university must comply with regulatory requirements of the DOS:
 - i. mandatory insurance coverage for J-1 visitors and their dependents,
 - ii. detailed reporting on arrival and departure information, as well as on early program termination of all J-1 visitors.

Additionally, program parameters defined by the DOS restrict the university from using J-1 sponsorship for tenure-track appointments and from sponsoring for permanent residence any participant in its exchange visitor program. Failure to comply with DOS regulations results in loss of an institution's authorization to issue Form DS-2019 certificates of eligibility.

- b. The exchange visitor program permits an individual to come to the United States to complete a stated objective in a specified discipline in one of several categories. The categories in which an exchange visitor

may come to Rutgers are: student, professor, research scholar, or short-term scholar.

- i. Once an exchange visitor is admitted to the United States, DOS seldom approves a change in category for the visitor, for example, from “research scholar” to “student.” For this reason, it is essential that departments carefully evaluate prospective exchange visitors’ objectives prior to formalizing an invitation and requesting issuance of the Form DS-2019.
- ii. The position to which the exchange visitor is appointed must be temporary and the duration of the appointment is limited by the particular category of J-1 being used. For those in the “professor” or “research scholar” categories, the visitor’s J-1 program may not exceed five (5) consecutive years, including time spent in either of those two categories at another institution immediately prior to coming to Rutgers. “Short term scholars” are restricted to a maximum of six (6) consecutive months, and exchange visitor “students” coming to Rutgers solely to conduct research towards their home-country graduate degrees are restricted to a maximum of two (2) years.

Individuals in professions judged by the United States Department of State to be in short supply in their country of permanent residence or citizenship, or who receive financial support directly or indirectly from the United States or their home government, are subject to a “two year home residency requirement.” This requirement makes them ineligible for certain immigration benefits and options until they have resided in their country of permanent residence or citizenship for a period of two years following completion of their original program objectives. In some cases, waivers of the two-year home residency requirement may be possible to obtain, but the process is difficult and may take many months – in some cases up to a year. It would constitute a conflict of interest if Rutgers were to assist J-1 visitors in obtaining a waiver; interested visitors must obtain information on the U.S. Department of State website.

- c. Obtaining J-1 status:
Specific time frames must be adhered to in obtaining J-1 status:
 - i. If the visitor will be coming to Rutgers directly from overseas, the department should submit a DS-2019 Request Form to the appropriate campus office at least twelve (12) weeks prior to the exchange visitor’s starting date.
 - ii. If the visitor is already in the U.S. and in J-1 status, the time frame may be shorter.
 - iii. if the visitor is in the U.S. in another nonimmigrant status, the time frame may be somewhat longer if processing backlogs for change of status exist at the USCIS.

The procedures for obtaining J-1 status are as follows:

- i. For departmental hiring authorities, approval must be obtained from the chairperson and dean. For center and institute hiring authorities, approval must be obtained from the director. The hiring authority obtains a "Request for Certificate of Eligibility (DS-2019) for a Visiting Foreign National (J-1 Visa) from the appropriate campus office. For New Brunswick or Camden contact Rutgers – New Brunswick, Center for Global Services,

for Newark campus contact Rutgers – Newark, Office of International Students and Scholars and for Rutgers - Biomedical & Health Sciences (RBHS) contact Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services.

- ii. Submit the completed request to the appropriate campus office. For the New Brunswick and Camden campuses, please use the online DS-2019 request program at <https://visarequest.rutgers.edu/Disclaimer.aspx>
- iii. Upon receipt of the completed request and all required supporting documentation, the appropriate office issues Form DS-2019, which the alien uses to apply for a visa overseas or for a change of status or transfer within the U.S.

Hiring units should take into consideration the time required for international mail delivery and visa application/interview processes when planning the overall time needed to invite a J-1 exchange visitor.

2. Temporary Worker in a Specialty Occupation (H-1B)

For purposes of academic or professional employment, an H-1B visa holder is an alien "coming temporarily to the United States to perform services in a specialty occupation." A "specialty occupation" is one that "requires a theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent...."

Under current regulations, an H-1B visa is restricted to six (6) years. An H-1B may be filed for a maximum period of three (3) years at a time; Rutgers generally files an H-1B petition only through the end date of the actual appointment unless a department:

- a. documents that funding is assured for the full period of time requested;
- b. states in writing that it fully intends to employ the alien for the entire period requested; and
- c. confirms in writing that it will immediately notify the appropriate campus international office if the employment should terminate prior to the end date requested.

The H-1B is the appropriate status for an individual whom the university may want to offer a regular position.

The H-1B visa is valid for only a specific position at a specific location with a specific employer. If an H-1B employee is to take on new or additional job responsibilities, or change the location where job responsibilities are carried out or add an additional location, a new petition must be filed and acknowledged by USCIS as having been received before any such changes occur. Also, if the university terminates the H-1B employment prior to the end date of the approved H-1B petition, the department or dean's office, as arranged, is responsible for "reasonable costs" of return transportation for the employee to his or her last place of foreign residence.

The USCIS will not accept an employer's H-1B petition until the employer has first obtained a clearance through the U.S. Department of Labor. This clearance, called a "Labor Condition Application," certifies that the employer is not offering the foreign national employment that will adversely affect the working conditions of U.S. workers. Thus, for example, the employer must document that it is paying at least the "prevailing wage" to the employee.

Specific time frames must be adhered to in obtaining H-1B status:

- a. Processing times and backlogs at government agencies are in constant flux. Always check with the appropriate campus office on current time frames.
- b. To avoid unnecessary delays, departments are encouraged to submit H-1B petition packets to the appropriate campus office at the earliest time allowed by H-1B regulations, which is six (6) months prior to the H-1B employment start date.
- c. Departments may also choose to pay a "Premium Processing" filing fee of \$1,225 to the Department of Homeland Security (DHS) to have the H-1B petition expedited.

For faculty positions in Camden and New Brunswick, approval must be obtained from the chairperson, dean, or director and the Vice President for Academic Affairs. For faculty positions in Newark, approval must be obtained from the chairperson or dean and the Dean of FAS-N. For faculty positions at Rutgers Biomedical and Health Sciences approval must be obtained from the office of the Chancellor.

For staff positions in Camden and New Brunswick, approval must be obtained from the chairperson, dean, or director and the Office of Academic Affairs. For staff positions in Newark, approval must be obtained from the chairperson or director and the Dean of FAS-N. For staff positions at Rutgers Biomedical and Health Sciences, approval must be obtained from the Office of the Chancellor.

The Procedures for obtaining H-1B status are as follows:

- a. Ask for instructions and forms for filing an H-1B petition from the appropriate office.
- b. Specify what type of position is being offered and provide the prospective employee's six-year visa history in the U.S., if applicable.
- c. The procedure first involves clearance from the U.S. Department of Labor and then later requires approval from the USCIS for the university's petition to hire the alien.
- d. Once the petition is approved, the alien applies for the visa overseas or, if a Canadian citizen, for admission at a U.S. port of entry or preflight inspection facility. If the alien is already in the U.S., the university's petition must so note in order for the petition approval to include either a change of status for the alien or an extension of status/transfer of visa sponsorship to Rutgers.

3. Optional Practical Training for F-1 Students and Academic Training for J-1 Students

a. Optional Practical Training for F-1 Students:

Foreign nationals who are classified as F-1 may be employed part time or full time in occupations directly related to their field of study if granted authorization for "optional practical training" by the USCIS. Optional practical training may take place in increments at various points during a student's academic career or within a certain time frame after completion of a degree program. Depending on when the practical training takes place, it may or may not be restricted to part-time employment. Authorization for optional practical training by the USCIS is in the form of a laminated photo-bearing card which notes the beginning and ending

dates and whether the practical training is full- or part-time; a corresponding notation with this same information should also appear on page three of the student's Form I-20.

Optional practical training authorization is limited to twelve (12) months for each degree level an F-1 student undertakes and is based on the condition that the term of employment will end within the allotted twelve-month period or the portion thereof remaining.

The time frames and procedures to obtain F-1 Optional Practical Training authorization are as follows:

- i. Depending upon processing backlogs of the USCIS Service Center having jurisdiction over the student's school, the time frame can range from one to six months.
- ii. No university approvals are required prior to employment other than those normally required by the university for appointments of the same nature. Prior to hiring an F-1 practical training student, however, departments must verify that the employment is directly related to the student's field of study as noted on his or her Form I-20; departments are also strongly advised to consult Rutgers – New Brunswick, Center for Global Services in New Brunswick or the appropriate office on the Rutgers-Newark campus or Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services office to discuss whether longer-term visa options will be available if requested by the department once the optional practical training period expires and, if so, what the relevant time frames for pursuing any such options would be.
- iii. The F-1 student must get a recommendation from his or her school's international student office and then must file an application with and get approval from the USCIS.

b. Academic Training for J-1 Students:

Exchange visitors in the student category may accept employment in occupations directly related to their field of study if authorized for "academic training" by the program sponsor. Academic training may take place during or after completion of a course of study and is limited to 18 months in the aggregate, except when used for post doctoral research, in which case it is limited to three (3) years and is available only after completion of a doctoral degree. Academic training authorization from the program sponsor must:

- i. name the specific job and employer for which the training is authorized;
- ii. state the inclusive dates of the employment; and
- iii. note whether the authorization is for part-time or full-time employment.

The time frames and procedures to obtain J-1 Academic Training authorization are as follows:

- i. Request can be authorized directly by the J-1 student's J-1 program sponsor without USCIS approval; time frames therefore are based on the J-1 program sponsor's schedule.

- ii. No university approvals are required prior to employment other than those normally required by the university for appointments of the same nature.
- iii. Prior to hiring a J-1 student with "academic training" departments are strongly advised to consult with Rutgers – New Brunswick, Center for Global Services in New Brunswick or the appropriate Rutgers-Newark office or Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services office in order to discuss whether longer-term options described elsewhere in this document will be available to the alien if the department should later wish to extend employment, and what the relevant time frames for pursuing any such options would be.
- iv. The J-1 student must obtain written authorization from his or her program sponsor. The employer assumes responsibility for supervising the training and may be required to conduct performance reviews and/or produce written evaluations.

4. Visitor for Business (B-1)

The B-1 visitor for business visa classification can be used by scholars planning to make short visits to one or several campuses in the United States. It is not intended for use by an individual accepting any type of formal appointment for a term or longer. A B-1 visa holder cannot accept any type of salary or payment for services, but can accept reimbursement for travel and incidental expenses and, with certain restrictions, may be able to accept honoraria and reimbursement for travel and incidental expenses. Check with Rutgers – New Brunswick, Center for Global Services or the appropriate Rutgers-Newark office or Rutgers - Biomedical & Health Sciences (RBHS) – Center for Global Services office for details on B-1 restrictions.

The U.S. Department of State has become stricter in recent years about issuing B-1 visas. Individuals for whom another nonimmigrant visa classification (such as J-1 or H-1B) would be equally or more appropriate may find it difficult to obtain a B-1.

The time frames and procedures to obtain B-1 visa are as follows:

- a. No university approvals are required beyond regular approvals required for invitations or appointments of the same nature.
- b. The department verifies with the appropriate office that the terms of the visit, including dates, purpose, and expected honoraria/reimbursement comply with regulatory restrictions.
- c. Once this is verified, the department issues a letter of invitation to the visitor stating the dates and purpose of the visit and specifying that the university will not be employing the individual. If the university will be providing an honorarium and/or covering the visitor's actual expenses, the letter should so state.

Consult with the appropriate campus international office for more information.

5. Visitors under the North American Free Trade Agreement (TN)

Canadian and Mexican citizens qualified to practice a profession listed in the North American Free Trade Agreement (NAFTA) may enter the U.S. for periods of up to twelve (12) months in the TN visa category. Most academic titles and many scientific research titles are included in the agreement, although the TN is

not appropriate for tenure-track, tenured, or staff positions, since those types of appointments have permanent intent.

The TN is renewable in increments of up to twelve (12) months at the discretion of the issuing authority (i.e., a DHS officer for Canadians or U.S. visa officer for Mexicans). Petitions for extension of TN status made within the U.S. are cumbersome and often more costly than those effected by departure to Canada or Mexico and subsequent reentry to the U.S. In any case, the university does not file TN extension petitions with the USCIS; individuals employed at Rutgers in TN status must leave the U.S. and reenter to effect an extension of stay.

The time frames and procedures to obtain TN status are as follows:

- a. The time frame is a matter of days
- b. Employer's petition is not required. Canadian citizens do not require a visa and may make admission directly at a port of entry or preflight clearance facility. Mexican citizens must apply for and obtain a TN visa at a U.S. consulate before applying for admission to enter the U.S.
- c. No university approvals are required beyond the normal approvals required for that type of appointment.
- d. Consult with the appropriate campus office to determine whether the TN or H-1B is more appropriate for any given situation, and whether the job title is one covered under NAFTA.

For Canadian citizens: the employing department issues a letter to the prospective employee outlining the job title, salary, dates (the appointment must be temporary) and job responsibilities. The letter must state the specific credentials required for the job. The employee must present the letter and proof that he or she possesses those credentials at the time of entry to the U.S. There is a fee collected by the immigration service from the employee upon entry in TN status.

For Mexican citizens: the employing department issues a letter to the prospective employee outlining the job title, salary, dates (the appointment must be temporary) and job responsibilities. The letter must state the specific credentials required for the job. The employee must present the letter and proof that he or she possesses those credentials at the time of application for the TN visa as well as at the time of entry to the U.S.

D. Permanent Residents

Permanent residents are admitted to the United States indefinitely on immigrant visas, frequently known as "green cards." An immigrant visa is issued after the approval of a "preference petition" based on family, self, or employer sponsorship. Depending on the specific procedure followed, employer-based immigrant visa sponsorship at Rutgers may be designated either as the "Employment Based-First" or "Employment Based-Second" preference category. If the beneficiary is already in the United States and there is no visa backlog, he or she may submit an application for adjustment of status to permanent residence (Form I-485) concurrently with the university's immigrant visa petition or at any point after the university receives a receipt notice from USCIS on that petition. An applicant for adjustment of status is entitled to apply for employment authorization and a travel document.

Rutgers has very clearly-delineated policies regarding the types of positions it will sponsor for permanent residence: with rare exception, the university will sponsor only tenure-track or tenured faculty positions for permanent residence.

1. An Employment-Based First
An Employment-Based First preference petition is used by the university for individuals who meet the regulatory definition of an "Outstanding Professor or Researcher." This preference category avoids the necessity of filing an Application for Alien Employment Certification and therefore is the most direct of all paths to employment-based permanent residence. The Employment-Based First preference is also used for an "Alien of Extraordinary Ability," a petition that Rutgers files only on extremely rare occasions for certain senior administrative employees.
2. An Employment-Based Second
An Employment-Based Second preference petition filed with the USCIS must be accompanied by an approved Application for Alien Employment Certification commonly called a labor certification. This document must be filed with and approved by the U.S. Department of Labor, and sometimes constitutes a lengthier process than the Employment-Based Second preference petition itself, although federal agency processing times are in a constant state of flux.
3. Permanent Labor Certifications
Permanent labor certifications ("PERM") are approved on the basis of documentation of a *bona fide* effort to recruit qualified United States citizens and permanent residents for a given position. For a conventional PERM application, evidence must be presented to prove that no United States citizen or permanent resident job applicant was minimally qualified for the job, and that the prevailing wage is being paid. A "special handling" provision is made for university teaching positions; evidence must be presented only to prove that the foreign national hired to teach was the most qualified of all applicants. This provision can be used if the search included at least one *printed* journal advertisement or, if the advertisement was placed online, it must have met certain specific requirements set by the U.S. Department of Labor. In both cases, the advertisement must contain certain required information. In addition, a "special handling" labor certification application must be filed within 18 months of the date the final candidate was selected. In some cases, regulations require an additional recruitment effort to be conducted under the auspices of the United States Department of Labor even if a search has already been conducted for the position.

Time frames and procedures to obtain permanent residence are as follows:

1. Time frame
 - a. Depending upon the type of preference petition being filed, backlogs at the U.S. Department of Labor and USCIS at the time of filing, and the availability of immigrant visas, the process of university sponsorship for permanent residence may take anywhere from ten (10) months to three (3) years – sometimes longer.
 - b. Throughout this time the alien must be able to maintain lawful nonimmigrant status in the U.S. or leave the country to wait for the immigrant visa. For this reason, it is essential that all departments plan ahead and expedite university procedures. The university is subject to sanctions for employing foreign nationals who are not authorized to work.
 - c. A foreign national who receives an immigrant visa based on employer sponsorship may, after a period of "good faith," change employers or even careers.

Because processing times for permanent residence vary widely and are in constant flux, Rutgers departments intending to sponsor an employee for permanent residence should check with the appropriate campus office to obtain

current time frames. Employing units are responsible for initiating green card sponsorship of new foreign tenure-track and tenured hires by contacting the appropriate campus office within the first three months of the new employee's start date.

2. Procedures

- a. Approvals for New Brunswick or Camden must be provided by the chairperson, dean, or director and the Executive Vice President for Academic Affairs. For Newark approvals must be provided by the Chancellor and her/his designee. For Rutgers Biomedical and Health Sciences approvals must be provided by the Office of the Chancellor and her/his designee.
- b. Consult with the appropriate campus office for instructions and forms to file an "Outstanding Professor/ Researcher" petition or a "Labor Certification" application. If applying for labor certification, specify whether the position has a faculty title (covered by the AAUP salary schedule) or a staff title.

Appendix

Examples of University Payroll Titles

Any tenure-track or tenured faculty title

For initial employment:

- University H-1B sponsorship

For long-term or permanent employment:

- University sponsorship for permanent residence via “Labor Certification” or if qualified, “Outstanding Professor/Researcher”

Post Doctoral Associate and Post Doctoral Fellow

For temporary employment:

- university J-1 or H-1B sponsorship
- May instead be employed or begin employment on F-1 Practical Training or J-1 Academic Training, both through the individual’s degree-granting institution.

No permanent residence sponsorship for post docs.

Research Associate and Research Assistant Professor/ Research Associate Professor

For temporary employment:

- University J-1 or H-1B sponsorship. (J-1 sponsorship is the default unless employee has specific reason for wanting H-1B status, such as avoiding a two-year home residence requirement that applies to some J-1 visitors)
- May instead be employed or begin employment on F-1 Practical Training or J-1 Academic Training, both through individual’s degree-granting institution.

No permanent residence sponsorship for Research Associates.

No permanent residence sponsorship for Research Assistant Professors or Research Associate Professors, with rare exceptions.

The university will occasionally consider requests to support permanent residence sponsorship for Research Assistant/Associate Professors based on the following criteria: (1) the individual has already been employed at Rutgers in one of these titles for at least 3 years; (2) the department and appropriate dean’s office guarantee funding for the employee for at least 5 years into the future and document their ability and intent to employ the individual for at least that long; (3) the department provides a strong case as to why no one else is qualified to fill the position; (4) the employee meets the regulatory criteria for an “Outstanding Professor/Researcher” petition (*in no case* will a PERM labor certification be filed for grant-funded employees); and (5) the department or dean’s office pays a premium fee for the cost to the university of processing the permanent residence paperwork by exception.

Research Assistant (Full-time, non-student position)

For temporary employment:

- University J-1 sponsorship
- May instead be employed or begin employment on F-1 Practical Training or J-1 Academic Training, both through individual’s degree-granting institution.

Occasional exceptions for temporary employment:

- The university will consider requests to support H-1B sponsorship in occasional cases in which (1) the individual does not want a J-1 visa because it will subject him or her to a “2-year home residence requirement” (note: *not* all J-1 visa holders are subject to this requirement) **or** the individual has used up all time permitted on the J-1 visa; **and** (2) in giving the individual a “Research Associate” appointment, the department would be paying the foreign national a significantly higher salary than other postdoctoral researchers of similar experience and qualifications currently employed by the department. Departments that wish to put forward a request for an exception to this university policy and can document *both* (1) and (2) above may request an exception to university policy on a Request to Approve Research Assistant Title and H-1B Sponsorship on an Exceptional Basis” form.

No permanent residence sponsorship for Research Assistants.

By VP exception only, some senior computing titles at IT grade 08 or above, and very rare occasional exceptions for MPSC positions (grade 09 or above)

For temporary employment:

- University H-1B sponsorship
- May begin employment on F-1 Practical Training, arranged through individual’s degree-granting institution.
- Departments hiring with promise of permanent residence sponsorship must also comply, *prior* to making such promise, with criteria for permanent employment listed below.

For permanent employment:

- Upon thorough documentation that no *minimally* qualified U.S. candidates applied for the position, university sponsorship for “Labor Certification” or if qualified, “Alien of Extraordinary Ability” will be considered if department can provide a convincing case that the employee is critical to the academic mission of the university.