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## **University Sponsorship of Foreign Nationals for the H-1B Nonimmigrant and Permanent Residence Immigrant Visas**

**Posting Date: October 2, 2002**

### **I. Purpose of this Legal Advisory**

Each year, The George Washington University (“GW” or the “University”) sponsors more than 2500 nonimmigrant students and scholars who come to the U.S. to study, research and teach. The immigration classifications used most frequently to appoint nonimmigrant faculty and researchers (“scholars”) at GW are the J-1 Exchange Visitor, the H-1B Temporary Worker or the TN for Canadian citizens. GW may also sponsor foreign nationals in certain GW position classifications for permanent resident status (PR). This Legal Advisory memorializes the University’s position on sponsorship of foreign national employees for the H-1B nonimmigrant and PR immigrant visa categories, and addresses briefly eligibility for GW sponsorship for the J exchange visitor program.

Generally, the H-1B classification is available to foreign nationals who are coming to the United States temporarily to perform services in a specialty occupation. Permanent Resident status, on the other hand, confers on foreign nationals the right to live and work in the U.S. without time limitations. The J exchange visitor program of the U.S. Department of State provides opportunities for foreign nationals to enroll as students or to work as professors, researchers or short-term scholars at GW on a temporary basis.

GW is the legal sponsor of all employer-sponsored applications and petitions to the federal government for nonimmigrant and immigrant visa classifications. When GW hires foreign nationals either temporarily or permanently, it is subject to federal laws and regulations of the Departments of State, Labor and Justice (i.e. the Immigration and Naturalization Service (INS)). Success in obtaining approval of petitions for foreign national temporary and permanent employees in any nonimmigrant or immigrant visa category is dependent upon responsible and full adherence to law, regulation, and procedures. Failure to adhere to such laws subjects the University to potentially serious sanctions for employing individuals who are not authorized to work in the United States.

Since September 11, immigration practices generally have come under heightened scrutiny from the INS and others. As a result, the Office of the VP and General Counsel (“OGC”), in partnership with the Office of the VP for Academic Affairs and other University offices, has determined that some changes are required to the University’s practices regarding H-1B and PR sponsorship. This Legal Advisory announces and explains the University’s position, effective immediately, as to the categories of employment at GW that are eligible or ineligible for GW sponsorship for the H-1B or for PR. Eligibility is based on the employee’s official University position classification as described in the chart in Part II.

## II. Eligibility for GW Sponsorship of Foreign Nationals for H-1Bs and PR

### H-1B Sponsorship

**Students (Full, Part-Time), Staff, Research Assistants, Senior Research Assistants, Research Associates and Senior Research Associates:** Not eligible. Staff are: librarians and administrative, technical and librarian staff. *Staff now holding a GW-sponsored H-1B usually are eligible for an extension not to exceed the 6-year H-1B cap.*

**Postdoctoral Scientists, Instructors, Visiting and Limited Service Faculty:** Not eligible.

**Regular Faculty, Research Faculty, Research Scientists, Senior Research Scientists and Lead Research Scientists:** Eligible. Regular active status full-time faculty, including research faculty, with the following official University titles are eligible for H-1B sponsorship: University professor, professor, associate professor, and assistant professor. Research Scientists, Senior Research Scientists and Lead Research Scientists who are not faculty are also eligible.

### J Exchange Visitor Sponsorship

**J Students, Postdoctoral Scientists, Research Scientists, Senior Research Scientists and Lead Research Scientists, and faculty other than tenure-track appointments:** Eligible. The determination as to whether the J or H-1B is more appropriate for those who are eligible for such sponsorship will be made by the International Services Office.

### Permanent Resident (PR) Status Sponsorship

**Students, Staff, Research Assistants, Senior Research Assistants, Research Associates, Senior Research Associates and Postdoctoral Scientists:** Not eligible.

**Research Scientists, Senior Research Scientists, Lead Research Scientists and Research Faculty:** Eligible, subject to certain requirements. The University will only consider such sponsorship for foreign nationals hired into full-time permanent positions at GW. If there is a mutual expectation of long-term employment, certain advanced researchers may qualify for GW sponsorship for PR. Factors to be assessed to determine eligibility for PR sponsorship include: Level of the position, how long the scholar has been at GW, the permanence of the position and the likelihood of long-term employment at GW, the level and certainty of funding for the position, the search that was conducted to fill the position, the availability of qualified U.S. citizens and permanent resident

workers in the field, the qualifications of the scholar, and the Department Chair's support for the case.

**Regular Active Status Faculty:** Eligible, if regular faculty member holds an official University title of University professor, professor, associate professor and assistant professor. The University will only consider such sponsorship for foreign nationals hired into full-time permanent positions at GW. If there is a mutual expectation of long-term employment, certain contract-teaching faculty may qualify for GW sponsorship for PR.

Special Note on Sponsorship of Foreign Resident Physicians

GW's Graduate Medical Education program accepts foreign medical residents sponsored on the J-1 visa by the Educational Commission for Foreign Medical Graduates (ECFMG) only. GW does not sponsor foreign physicians for graduate medical education for the H-1B in accordance with recommendations by the American Medical Association and the American Association Medical Colleges. Foreign resident physicians are also ineligible for permanent residence sponsorship.

**Please note that mere eligibility for sponsorship does not in itself qualify a foreign national for GW sponsorship for the H-1B or PR.** The University must assess various factors in order to determine if sponsorship may legally be made. This assessment is made primarily by ISO based on Departmental requests for sponsorship and applications, legal requirements and this Advisory, and OGC as needed.

Explanations for sponsorship ineligibility are given in the background document on OGC's website, a link to which is provided in IV below.

### **III. Additional Important Information**

#### **A. Privately Retained Attorneys**

It is not permissible for any employee or University Department to retain private attorneys to process any GW employer-sponsored petition. Privately retained attorneys do not have the authority to represent GW in any employer-sponsored petition for a foreign national employee, unless the private retained attorney has received specific written authorization from OGC to represent the University. Even where a private attorney is retained, GW remains the sponsor of the H-1B or PR petition and is thus liable to the U.S. government for any failure to adhere to immigration laws and regulations.

#### **B. Authority to Offer University Sponsorship for the H-1B or PR**

Given the legal requirements, no University Department or individual other than ISO and OGC has legal authority to represent to the current employee or prospective employee that the University will sponsor the foreign national for the H-1B or PR. Any such commitments made by Departments or persons other than these offices will not be

considered binding. The International Services Office is the designated office authorized to sign all Department of Labor and INS forms requiring a University signature.

#### **IV. For More Information**

Please refer to the links below for Frequently Asked Questions (FAQs) and for additional background information to this Advisory. Research staff position descriptions are available at <http://www.gwu.edu/~research/researchhiring.htm> and <http://www.gwu.edu/~research/budgetbasics.htm>. Grades of Academic Personnel are described at [http://www.gwu.edu/~facsen/faculty\\_senate/](http://www.gwu.edu/~facsen/faculty_senate/), on pages 13 and 14.

Please address any questions regarding individual employee cases to Susan J. D'Amico, International Services Office, extension 46860. Please address any questions regarding academic and research position classifications to Carol Sigelman, Academic Affairs, extension 47315. For other questions regarding this Advisory, please contact Caroline J. O'Neill, Esq., Office of the VP and General Counsel, extension 46503 or via email at [cjoneill@gwu.edu](mailto:cjoneill@gwu.edu).