

**Frequently Asked Questions (FAQs)
regarding
University Sponsorship of Foreign Nationals for the H-1B Nonimmigrant and
Permanent Residence Immigrant Visas**

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Generally

OGC anticipates the following Frequently Asked Questions (FAQs) in response to the Legal Advisory on University Sponsorship of Foreign Nationals for the H-1B Nonimmigrant and Permanent Residence (PR) Immigrant Visas, and offers responses below. It will not be possible to capture here every situation that a Department or employee may face. Please address any remaining questions regarding specific cases to ISO or regarding this Legal Advisory to the Office of the VP and General Counsel (OGC).

Frequently Asked Questions

1. I am a supervisor/member of a Department planning to hire a foreign national into a staff position (i.e. administrative, technical, librarian positions, Research/Senior Research Assistant, Research Associate/Senior Research Associate positions). Will GW sponsor this person for an H-1B visa?

Answer: No. As per the H-1B regulations and rationale described above, the University will not sponsor persons in staff positions for the H-1B nonimmigrant visa.

2. I am a staff member/my employee is a staff member who is currently employed as an H-1B, obtained from GW within the last three years. My/my employee's H-1B will expire within the next year. Will GW sponsor me/my employee for an extension of up to three years so that I/my employee can hold H-1B status for the maximum six-year period allowed by law? Will this enhance my/my employee's chances for GW sponsorship for PR?

Answer: Barring any unforeseen problems or changes in the law, a GW staff member holding a GW-sponsored H-1B is eligible for an extension, assuming the staff member continues to be employed pursuant to the original H-1B terms, including the GW position and location. The government sets a six-year cap for the H-1B. The U.S. Department of Labor and INS do not accept H-1B requests more than six months in advance of the continuation or the initial start date of the H-1B. Departments should consult ISO seven months in advance of the H-1B petition end date to obtain instructions for the extension request and to allow maximum internal processing time.

GW cannot consider PR sponsorship for staff members for the reasons explained in the

Advisory and background document. Therefore, even if GW agrees to sponsor an H-1B extension for a staff member, it will not be able to sponsor the staff member for PR.

3. I am a department wishing to hire a foreign national into a staff position at GW. The person I want to hire already has an H-1B from a prior employer. Can this person use the H-1B from the other employer to work at GW in a staff position?

Answer: No. If GW were to hire a foreign national into a staff position who holds an H-1B from another employer, GW would still be required to sponsor the person for employment at GW, because the H-1B is position- and location-specific. In other words, GW would have to file paperwork with the U.S. Department of Labor and the INS in order for the person to be authorized to work at GW. Since GW staff are ineligible for H-1B sponsorship under this Advisory, a foreign national holding an H-1B from a prior employer could not be sponsored by GW for the H-1B to work in a staff position. This position applies only to staff positions as defined in the Advisory.

4. I am a department wishing to hire a foreign national into a GW position that is eligible for GW H-1B sponsorship according to this Advisory. This foreign national already holds an H-1B from his/her employer. Can the foreign national begin work immediately at GW?

Answer: No. H-1B visas are specific as to employer, position, location and salary. For this reason, GW must first file a new labor condition application with the U.S. Department of Labor and a petition with the INS. Once ISO receives the fee receipt from INS, federal law allows the employee to begin work prior to final INS approval.

5. I am/my employee is a staff member on the second three-year period of the H-1B. Will the University sponsor me/my employee for permanent residence so that I may continue working at GW beyond the six-year H-1B maximum?

Answer: It is not possible for the University to consider PR sponsorship for staff, except in extraordinary circumstances.

6. I am a Department and want to hire a foreign national into a staff position (administrative, technical, and library staff and professional librarian positions). Since the University cannot sponsor persons in such positions for an H-1B or for PR, do I have any other mechanisms for hiring the foreign national into this staff position?

Answer: No other mechanisms are available through University-sponsored employment authorization for hiring foreign nationals into staff positions.

7. Who has the authority to hire outside counsel to handle a Department's request on behalf of an employee for an employment-based H-1B or PR visa?

Answer: Only the Office of the VP and General Counsel.

8. I am a member of a Department or Dean planning to hire a foreign national into a Regular Faculty (excluding Instructors), Research Scientist, Senior Research Scientist or Lead Research Scientist position. What process do I follow?

Answer: The Department Chair or Dean should first consult with ISO to determine an appropriate nonimmigrant visa category. The immigration classifications most frequently used to appoint nonimmigrant faculty and researchers ("scholars") at GW are the J-1 Exchange Visitor, the H-1B Temporary Worker or the TN (NAFTA) for Canadian citizens. The type of visa chosen depends on many factors: the source and amount of the salary/funding, the level of the position, the duration of the appointment, how soon the appointment will begin, whether the individual is currently in the U.S. or has recently been in the U.S. and is therefore subject to certain restrictions, and whether the scholar's spouse hopes to obtain work permission.

Once ISO has chosen the most appropriate category for visa sponsorship, the information packet specific to that category will be provided to the Department. The Department must complete the packet, compile all required materials and forward the completed packet to ISO for processing. Because resolution of the complex issues involved in employing foreign scholars is time-consuming, Departments must make their requests to ISO with considerable lead-time. In the case of J-1 scholars coming from abroad, Departments must make their requests to ISO with a minimum of two months lead time in order to ensure sufficient time for review and issuance of a Form IAP-66 (soon to be renamed DS-2019) and to enable the scholar to receive the document, to obtain a J-1 visa stamp at a US Consulate and to travel to the U.S. For the H-1B, Departments must make their requests to ISO 4-6 months in advance of the anticipated work commencement date, as the H-1B application/petition process involves review by up to three government agencies.

9. Will GW appoint faculty members eligible for GW H-1B sponsorship directly into tenure-track positions?

Answer: Yes. According to the VP for Academic Affairs, GW no longer requires that the foreign national hold U.S. Citizenship or permanent resident status to be eligible for a tenure-track appointment. New foreign faculty hired through a national search may be appointed directly into tenure-track positions while in a nonimmigrant status with appropriate work authorization. The most common immigration classification used for tenure-track faculty under GW sponsorship is the H-1B. On occasion, new faculty may begin their tenure-track appointment in some other immigration classification (e.g. F-1

Optional Practical Training or TN) and later change to H-1B. The only immigration status that is legally prohibited from a tenure-track appointment is the J-1 professor or researcher category. Typically, prospective faculty who are “All But Dissertation” (ABD) at the time of hire and who are expected to graduate prior to commencement of the appointment will begin employment with eligible work authorization pursuant to another immigration classification (e.g., F-1 Optional Practical Training).

Special Note for Scholars who are Graduates of Foreign Medical Schools

Special regulations govern scholars who are graduates of foreign medical schools. Clinical fellows or resident physicians with foreign medical degrees are sponsored under the J-1 program by the Educational Commission for Foreign Medical Graduates (ECFMG). GW does not sponsor foreign physicians coming for graduate medical education for the H-1B in accordance with recommendations by the American Medical Association and the American Association Medical Colleges.

We hope that this Advisory will help streamline H-1B and PR processing by clarifying which H-1B or PR sponsorship requests are appropriate for submission to ISO. OGC and ISO are exploring other measures for streamlining legally sufficient requests for H-1B or PR, including the development of training and improved packet instructions for Departments making requests for H-1B and PR sponsorship and processing.