

Policy Statement Regarding Sponsorship for  
U.S. Lawful Permanent Resident Status & H-1B Specialty Occupation  
Approved by Administrative Council October 8, 2008

**Permanent Residency**

In a memorandum sent on 19 May 2004 from the Associate Provost to all Deans, the Associate Provost indicated that “in order to reduce risk to the university, Georgia State units are required to use the services of ISSS” (International Student and Scholar Services or International Services) for all immigration services for international scholars. The 19 May memorandum also established a schedule of fees for international scholar services (see Addendum A). This includes the authority to submit employment-based adjustment of status petitions to the U.S. Citizenship & Immigration Services (USCIS) on behalf of foreign nationals seeking U.S. Lawful Permanent Resident (LPR) status.

There are certain employment-based permanent residency petitions that require a job offer letter to be submitted from, or on behalf of, the University. Pursuant to University guidelines and policies, as well as Federal government regulations and requirements, International Services has the authority to accept or decline the filing of such petitions that require a job offer letter. There are other employment-based petitions that do not require a job offer letter or employer sponsorship. With regard to these cases, the foreign national may choose to submit a petition on their own and/or with the assistance of an attorney, without any employer sponsor. However, even in these cases that do not require an employer sponsor, it is extremely important that International Services is aware of the filing since it may have serious implications on the international’s status within the United States.

**International Services MUST approve, sign, and submit the petition to USCIS for the following preference categories and must process them in-house unless International Services authorizes that the University system of Georgia (USG) designated outside attorney assist:**<sup>1</sup>

**EB-1(B):** Outstanding researchers and professors who are internationally recognized, have a minimum of three years of experience, and have been offered a tenured, tenure-track, or long-term research position comparable to tenure-track at a university or research institution. No labor certification is required. A job offer IS REQUIRED.

**EB-2:** Members of the professions holding advanced degrees or aliens of exceptional ability in the sciences, arts, or business. “Advanced degree” is defined as any academic or professional degree or foreign equivalent above the U.S. baccalaureate. In some cases, a baccalaureate plus five years of appropriate experience can be counted as a master's degree. A Permanent Labor Certification and a job offer ARE REQUIRED.

**EB-3:** Skilled workers, professionals, and other workers. Professionals who do not hold advanced degrees, but who hold licenses, certificates, or other professional qualifications. A Permanent Labor Certification and a job offer ARE REQUIRED.

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<sup>1</sup> If the department, school, administrative, office or foreign national is authorized by International Services to retain the services of an attorney for any of these categories, International Services must sign any formal documentation as the official representative of the University. Other faculty members and/or staff members are not authorized to sign on behalf of the University. In addition, the foreign national must give the attorney permission to release information about the petition to designated International Services staff upon request. Any attorney fees incurred will be the responsibility of the individual beneficiary and/or their department.

***International Services MUST be informed of an international's filing for any of the following preference categories, but International Services is not responsible for the filing of the petition with USCIS since no employer sponsor is required:***

**EB-1(A)**: Persons of extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who will prospectively be of substantial benefit to the United States. No labor certification is required. A job offer is NOT required.

**EB-1(C)**: Multi-national executives and managers who have been employed outside of the United States for at least one year within the three years immediately preceding entry into the U.S. and are or will be employed in an executive or managerial capacity for that same employer or its subsidiary, branch, or affiliate in the U.S.

**EB-2 (National Interest Waiver)**: Aliens of exceptional ability in the sciences, arts, or business whose presence and activities in the U.S. are in the national interest. A job offer is NOT required and the labor certification is waived.

#### Criteria for Immigration Sponsorship by Georgia State University

Pursuant to internal Georgia State University policy, the following criteria must be met in order to establish eligibility for sponsorship for U.S. Lawful Permanent Resident status:

- **Staff**: Staff members must hold a permanent, full-time position at the University and must have been employed at Georgia State University in H-1B or O-1 visa classification for at least two years in order to be eligible for sponsorship by the University. There are no exceptions to this policy for staff members.
- **Faculty**: All Faculty members and any teaching positions considered a permanent appointment are eligible to begin the permanent residency process as soon as they are under Georgia State H-1B sponsorship.

**Research Positions**: Because research positions are generally not tenure-earning, USCIS has defined "permanent" as a term of indefinite or unlimited duration in which there is an expectation of continued employment, unless there is good cause for termination. Researchers may use the phrase "Her appointment may be considered as permanent, in accordance with the regulations found at 8 CFR 204.5(i)(2)." Postdoctoral positions will not be considered for Permanent Residency.

*Exceptions to the above criteria are considered for extraordinary circumstances on a case-by-case basis by the Director of International Services. A request for an exception must be submitted to the Director of International Services from the Dean, Department Chairperson, or other top-ranking official in the school, department, or administrative unit.*

#### General Application Procedures

The following steps must be followed in order to be considered for sponsorship for U.S. Lawful Permanent Resident status by Georgia State University:

1. The department seeking to sponsor the foreign national must contact International Services to schedule an appointment between the foreign national, the faculty sponsor and/or department administrator, and the International Services scholar advisor.

2. Upon review of the foreign national's credentials and the University criteria for sponsorship, the International Services scholar advisor will make a determination regarding whether or not the foreign national meets University and Federal guidelines for sponsorship. In extraordinary cases, the Director of International Services may be required to make a final determination.
3. If the International Services scholar advisor determines that the foreign national does NOT meet University and Federal guidelines for sponsorship, the scholar advisor will notify the faculty sponsor and/or department administrator in writing and recommend other options.
4. If the International Services scholar advisor determines that the foreign national does meet University and Federal guidelines for sponsorship, the scholar advisor will notify the faculty sponsor and/or department administrator in writing and include a statement regarding which LPR preference category is most appropriate. Georgia State University will only pursue one type of permanent residency petition at a time for any one foreign national.
5. Following a favorable determination, the sponsoring department and the foreign national may begin gathering and submitting all required forms and documentation pursuant to the preference category in which they will be applying.

### **H-1B Temporary Worker in a Specialty Occupation**

The H1-B visa category is a temporary work visa for non-U.S. workers in an occupation that requires at least a bachelor's degree or the equivalent at the entry level. The employee's bachelor's degree must be related to the "specialty occupation" in which the employee is working. At the University, H-1B status is typically used for tenure-track faculty, academic researchers, research associates, and professional staff. It is not available for employees in secretarial, clerical, office and administrative support positions. Georgia State will sponsor employees for the H-1B status when the position ***requires a Bachelor's degree fitting the occupational field normally required for such a position.***

In order to obtain H-1B status for an employee:

- the employee's bachelor's degree must be related to the "specialty occupation" in which the employee is working;
- the employer must document the appropriateness of the wages to be paid, the duties and responsibilities of the position to be filled, and the employee's qualifications to fill that position;
- a prevailing wage declaration must be made to the Department of Labor that describes the position and not the employee.

***See the "H-1B Petition Packet"***  
***(<http://www.gsu.edu/iss>) for more detailed information.***

## Addendum A

### Fee-based International Faculty Immigration Services

Immigration services for international scholars will be a fee-based service provided by International Student and Scholar Services (International Services) in conjunction with Classification and Employment—where necessary. This will go into effect 1 July 2004.

**Rationale:** “Learning Has No Borders” is the vision of International Student and Scholar Services at Georgia State University. The scholar aspect of that vision supports the strategic teaching and research missions of Georgia State University through immigration services that make possible the presence of international scholars from around the world.

In the current fiscal environment in the State of Georgia, the support and expansion of those services will only be possible by moving to a fee-based structure. The fees charged will enable International Services to maintain professional staffing to support this work and represent a savings to the University by eliminating the need for outside legal counsel. Georgia State departments will be required to utilize the on-campus service and no outside counsel may be hired. The visa options and procedures are described below. Fees listed are in addition to any fees that must be paid directly to the appropriate agency.

#### J-1 Exchange Visitor Scholars

The University’s Exchange Visitor Program sponsors foreign nationals as temporary members of the academic staff for short-term teaching/lecturing, observing, conducting research, or consulting. Georgia State is authorized to host these categories of scholars: Professor, Research Scholar, Short-term Scholar, and Specialist. The J program is part of the Student and Exchange Visitor Information System (SEVIS) database and requires meeting all of its standards—accident and sickness insurance is required by regulation.

	Charge by	Typical	Fed Fees
	University	Atty fee	in all cases
• Fees to the hosting department			
○ Initial request for the DS-2019:	\$100	N/A	N/A
○ Extensions of stay:	\$50	N/A	N/A
○ Student exchange visitors:	No Fee	N/A	N/A

#### H-1B Temporary Worker in a Specialty Occupation

The H-1B nonimmigrant category is for professionals who will perform services in a specialty occupation, and is frequently used by Georgia State academic departments to hire faculty and researchers. The application process is coordinated by International Services in cooperation with Human Resources. The process involves the completion of a prevailing wage determination, Labor Conditions Application, and finally the application for the H visa to the US Citizenship and Immigration Services office.

	Charge by	Typical	Fed Fees
	University	Atty fee	in all cases
• Fees to the hosting department			
○ Initial request for the H visa:	\$600	\$1,250	\$2,050*
○ Extension of the H visa:	\$400	\$800	\$325

- \*This amount includes a \$1,225.00 expedite service fee and a \$500.00 Anti-Fraud, which are not always required. Each case must be reviewed individually to determine the true costs.

### **O-1 Workers of Extraordinary Ability**

The O-1 nonimmigrant category is for professionals who have achieved and sustained national or international acclaim for extraordinary ability in the sciences, arts, education, business, or athletics who are in the U.S. to work for a sponsoring employer. The application process is handled entirely in International Services and requires extensive documentation establishing “a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.”

	Charge by	Typical	Fed Fees
<u>Fees to the hosting department</u>	<u>University</u>	<u>Atty fee</u>	<u>in all cases</u>
○ Initial request for the O visa:	\$750	\$1,500	\$2,050
○ Extension of the O visa:	\$400		\$325

### **TN Professionals under NAFTA (Canada & Mexico)**

The TN status permits Canadian and Mexican citizens to work for Georgia State University in a professional occupation on a temporary basis. Only occupations specified in the NAFTA treaty can serve as the basis for TN employment.

	Charge by	Typical	Fed Fees
<u>Fees to the hosting department</u>	<u>University</u>	<u>Atty fee</u>	<u>in all cases</u>
○ Initial letter of employment			
○ for entry purposes:	NC	NC	NC
○ Change of Status to TN			
○ filed via petition	\$400.00	\$1250	\$325
○ Extension of TN status			
○ via travel:	NC	NC	NC
○ Extension of TN filed			
○ via petition:	\$200.00	\$400	\$325

### **B-1 Visitor for Business**

### **B-2 Visitor for Tourism**

These nonimmigrant “visitor” classifications permit temporary entry to the U.S. for either business or tourism. Neither of these visitors is permitted to engage in employment in the U.S. However, under limited circumstances they may receive honorarium payments and payments for associated incidental expenses.

	Charge by	Typical	Fed Fees
<u>Fees to the hosting department</u>	<u>University</u>	<u>Atty fee</u>	<u>in all cases</u>
○ Initial letter of invitation			
○ for entry purposes:	NC	NC	NC
○ Extension of B visa stay			
○ via travel:	NC	NC	NC
○ Extension of B status filed			
○ via petition:	\$200	\$400	\$290

E-3 Temporary Worker from Australia

The E-3 nonimmigrant category is for professionals who will perform services in a specialty occupation, and is used by Georgia State academic departments to hire faculty and researchers from Australia. The application process is coordinated by International Services in cooperation with Human Resources. The process involves the completion of a prevailing wage determination and mailing the application for the E-3 status to the US Citizenship and Immigration Services office.

	Charge by University	Typical Atty fee	Fed Fees (varies) in all cases
• <u>Fees to the hosting department</u>			
○ Initial request for the E-3 visa:	\$600	\$1,250	\$2,050
○ Extension of the E-3 visa:	\$400	\$800	\$325

**Permanent Residency in the United States (Green Card)**

Georgia State University will begin sponsoring applications for permanent residency, based on offers of employment for permanent positions at the Assistant Professor or Research Assistant Professor levels and above. “Acting, temporary, and visiting” assignments will not be considered for permanent residence nor administrative support staff positions. This is an extensive two step process that will take at minimum 18 months to two years and may take as long as four to six years or more. International Services will file a Labor Certification and subsequent I-140 for all EB-2 and EB-3 petitions or an I-140 for EB-1 petitions. The form I-485, the final application in the process for permanent residency, is the foreign national’s personal application and International Services cannot assist with filing. Foreign National’s can file form I-485 independently or with the help of any immigration attorney of their choosing..

It is important that the hiring department discuss the possibility of permanent residency at the time of hire. Many of the applicants will already be at the University in the H visa status and any delay could lead to the employee having to leave Georgia State employment and the U.S.

	Charge by University	Typical Atty fee	Fed Fees in all cases
<u>Fees to hosting department</u>			
○ Labor Certification*:	\$900	\$1,800	N/A
○ Immigrant petition, I-140:	\$300	\$600	\$580
▪ with labor certification			
○ Immigrant petition, I-140:	\$800	\$1,500-	\$580
▪ without labor certification		\$1,750	

NOTES:

1. “Charge by University” is the fee for services to be paid to Georgia State’s International Services.
2. “Typical Atty fee” is the set charges for the USG-approved private attorney to assist institutions with immigration processes. Note that this value is given for comparative purposes only as Georgia State requires the use of International Services.
3. “Fed fees” are processing fees paid directly to the federal government that are in addition to the fees paid to International Services or to an attorney for their services. (Updated 10/2010; Fees Effective Beginning 11/23/2010)

- Effective 16 July 2007, the Department of Labor changed the Labor Certification process to ensure that no candidate for Lawful Permanent Residence through the process of labor certification was allowed to pay any costs related to the labor certification. The rule applies to the first part of the process called the PERM. Thus the \$900 charge by the University for the processing is now required to be paid by the sponsoring department and cannot be paid by the employee. Further, the rule prohibits an employer from withholding the cost of the PERM from the employee's wages, either in increments or in a lump sum. Succeeding steps in the Green Card process can still be born by the employee.
- Per state law, faculty and staff are prohibited from signing any documents related to immigration visa status on behalf of Georgia State University. This includes Form G-28, Notice of Entry of Appearance as Attorney or Representative, or any other employer-based petitions or documents.