



University of Dayton  
Office of Legal Affairs

## IMMIGRATION SPONSORSHIP IN EMPLOYMENT

Immigration sponsorship – that is, taking the steps to enable a foreign national to hold employment in the United States, typically through an H-1B visa initially – is a complex process. This document is meant to guide hiring departments about the factors to consider in determining immigration support for open positions and, then, how to implement that decision in the hiring and employment process.

**1 DECIDE EARLY WHETHER TO OFFER IMMIGRATION SPONSORSHIP FOR A POSITION.** Prior to the start of a search for an open position, the hiring department, in consultation with Legal Affairs and the Provost's Office (faculty) or Human Resources (staff), should determine whether immigration sponsorship will be provided for a particular position. Factors to consider – and how they may impact the decision -- include:

Factor	How the factor may impact sponsorship
Whether the position requires a bachelor's degree.	If the position does not require at least a bachelor's degree, an H-1B petition is not possible. Sponsorship is not an option.
Whether the position is a specialty occupation.	For an H-1B petition or <b>green card</b> , the position needs to be a professional or specialty occupation (a field requiring "theoretical and practical application of a body of highly specialized knowledge"). If a person with <i>any</i> type of bachelor's degree would qualify, sponsorship should not be offered.
<b>For non-teaching positions</b> , whether unsuccessful recruitment for qualified U.S. workers can be shown.	If "unsuccessful recruitment for qualified U.S. workers" cannot be shown for a non-teaching position, then obtaining permanent work authorization – a <b>green card</b> – would be a challenge. Thus for staff positions for which many qualified U.S. workers are likely, long-term immigration sponsorship might present many obstacles.
<b>For faculty positions</b> , whether the position has a permanent line.	No H-1B or <b>green card</b> sponsorship is available for temporary faculty positions.
Whether only U.S. citizens can perform the work (a restriction in certain U.S. government-related work).	This restriction is rare, but if it exists, then sponsorship should not be offered.
The department's budget for the position.	Sponsorship costs are borne by the department. Costs to obtain temporary work authorization – the approved H-1B petition, which lasts for 3 years and can be extended for a second 3-year term – range between <b>\$950-\$3000</b> . Permanent work authorization – the <b>green card</b> , which (at UD) typically is sought after someone already has an approved H-1B petition – can cost an additional <b>\$8000-10,000</b> .
Timing.	Securing immigration status can take several months, plus steps must be properly sequenced. Note that, <b>for faculty positions</b> , sponsorship status cannot begin prior to the contract start date (typically August 16). <b>An international hire (that will be sponsored) must be completed by March 1 for an August 16<sup>th</sup> start date.</b>
Whether long-term diligence and focus can be sustained.	For each individual, the long-term plan must be kept in mind, as multiple steps can be required following initial acceptance of the job. As one example, if a <b>green card</b> will ultimately be sought for a faculty member, a "Labor Certification" must be sought within 18 months of the individual's acceptance of the position. Another example: Legal Affairs must be notified at least 6 months in advance of an H1-B expiring.

## 2 ONCE THE SPONSORSHIP DECISION HAS BEEN MADE . . .

### YES

SPONSORSHIP OFFERED



### NO

SPONSORSHIP NOT OFFERED



The minimum job requirements must be specific and consistent with the area of discipline. This means that, if the position is for a financial analyst, the job posting could not be open to those with a biology degree instead. If seeking permanent authorization (the **green card**) is anticipated in the future for the successful candidate, **there must be a national competitive recruitment and selection process conducted for the position, lasting no less than 30 days**. The sponsorship process would be discussed in any pre-search meeting.

To make clear that immigration sponsorship is not offered (and therefore foreign nationals who require work authorization should know *not* to apply), **specific language must be included in the job posting**. The specific language is prescribed by the U.S. Office of Special Counsel for Immigration-Related Unfair Employment Practices, an office within the U.S. Department of Justice. Any applicant for the position who indicates a need for sponsorship now or in the near future should not be considered for the position.

## WHO, WHAT, WHO HANDLES WHAT IMMIGRATION MATTERS ON CAMPUS?

Office of Legal Affairs: Employees	Center for International Programs: Students, Visiting Scholars
<ul style="list-style-type: none"> <li>H-1B visa petitions: The preparation, filing and maintenance of H-1B petitions are often by counsel overseen by the Office of Legal Affairs. General maintenance may be handled by in-house counsel.</li> <li>H-1B petition extensions: H-1B petition extensions are handled by Legal Affairs, typically with the involvement of outside counsel. Note, however, that <b>it is the responsibility of the faculty or staff member to inform Legal Affairs of the expiration of his/her immigration status at least 6 months before that status expires</b>.</li> <li>Transitions from an H-1B petition (temporary) to green card (permanent): For international faculty and staff who are seeking permanent residency, Legal Affairs assists with the process by retaining and managing the work of outside counsel who prepare the necessary documentation.</li> </ul>	<ul style="list-style-type: none"> <li>F-1 petitions and F-1 OPT (Optional Practical Training) and F-1 CPT (Curricular Practical Training) employment authorization documents: These petitions and employment authorization documents, which are all related to nonimmigrant student status, are handled by CIP.</li> <li>J-1 petitions: CIP assists with securing J-1 status for the Visiting Scholars program (and also helps arrange housing needs).</li> </ul>

## QUESTIONS

Any questions should be directed to **Legal Affairs**; call x9-4333 or email [legalaffairs@udayton.edu](mailto:legalaffairs@udayton.edu).

Go to <https://www.udayton.edu/policies/legalaffairs/immigration/> for more immigration information.