

# Employment of Foreign Nationals Policy

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## SECTION I. PURPOSE

The University of St. Thomas encourages global initiatives and recognizes the need for worldwide recruitment for positions on campus in line with the university's vision and strategic priorities. The appointment of foreign nationals is a complex matter involving three U.S. 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.

This policy is intended to ensure departmental hiring authorities comply with federal regulations concerning the employment of short- and long-term employees and use St. Thomas resources to the best strategic effect. Consistent with the commitment of St. Thomas to hire the best qualified candidate for a position, if it is determined that a foreign national is the best qualified candidate and the hire would comply with all applicable laws regarding such a hire, St. Thomas will assure the availability of funding for the legal and compliance costs associated with hiring the foreign national, consistent with this policy.

## SECTION II. SCOPE AND APPLICABILITY

This policy governs the hiring of all foreign nationals. The expectations set forth in this policy apply to all St. Thomas employees (faculty, staff and student workers) and all schools, colleges, divisions, departments and other units.

## SECTION III. DEFINITIONS

When used in this policy, the following terms have the following meanings:

- a. **Foreign national** means an individual who is not a U.S. citizen or a Lawful Permanent Resident, or Asylee or Refugee as established by U.S. Citizenship and Immigration Services (USCIS).
- b. **OISS** means the Office of International Students and Scholars within Global Learning and Strategy.

## SECTION IV. EMPLOYMENT OF FOREIGN NATIONALS

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

1. **Eligibility.** The university will sponsor and file petitions for foreign national employees to obtain an H-1B visa for those employed in specialty occupations. All criteria as defined by the Department of Homeland Security concerning the job requirements, the salary, and the

employee's credentials must be met in order for the position to be considered H-1B eligible. OISS will work with the hiring department and Human Resources to evaluate H-1B eligibility before filing.

- 2. Fees.** The following H-1B related filing fees are required by federal law to be paid by the employer: Anti-fraud fee, I-129 filing fee. These fees will be charged to the hiring department. Premium processing is an additional and optional fee that can be paid by the employer or prospective employee, as follows: If the petition is expedited for reasons that are personal to the prospective employee, then the employee will pay this additional fee. If the petition is expedited based on the university's work-related needs, then this cost will be paid by the St. Thomas hiring department. All filing fees for dependents of the employee will be paid for by the employee.
- 3. Processing and Filing the Petition.** OISS will process all new and continuing H-1B petitions. In certain cases, and at its own discretion, OISS may consult with an immigration attorney.

## **B. Permanent Residents**

- 1. Eligibility.** The university will sponsor foreign nationals for U.S. Permanent Residency ("green card") during employment at St. Thomas if the following conditions are met:
  - a. The position must be a regular, exempt faculty or staff appointment that is 1.0 FTE;
  - b. The position must be a tenured or tenure-track teaching faculty, or a highly specialized staff position that strongly aligns with the university's strategic priorities;
  - c. The hiring department intends to retain the foreign national and the position indefinitely and is willing to absorb the Labor Certification costs;
  - d. In accordance with applicable regulations, the hiring department must be able to demonstrate for non-teaching positions that there was no "ready, willing and able U.S. worker" applicant for the position who met the minimum qualifications of the position or (for positions involving some classroom teaching) that the foreign national was the best-qualified candidate for the position; and
  - e. The decision to sponsor the U.S. permanent residency must be approved in writing by the employee's direct supervisor and the President's Cabinet member with the most direct responsibility for the hiring department, following consultation with Human Resources and, in the case of faculty, the Vice Provost for Academic Affairs. Decisions to sponsor must be based solely on institutional need for the unique skills and expertise the foreign national employee possesses. The final decision to sponsor permanent residency will be based on the best interests of the university.
- 2. Ineligible Employees.** St. Thomas will not sponsor permanent residency applications for non-exempt staff, temporary staff or contingent faculty (such as adjunct faculty) or student employees (such as graduate assistants).
- 3. Restrictions.** No university employee (faculty, staff or student worker) is permitted to make any promise to a current or prospective employee that the university will sponsor them for permanent residency. The petitioning process is lengthy, and the final decision to grant permanent residency is made by U.S. Citizenship and Immigration Services. It is never a

certainty that permanent residency will be approved, and therefore it cannot be promised as an enticement.

- 4. Processing and Filing the Petition.** OISS will work with an immigration attorney of the University's choice to prepare and file all permanent residency petitions, in consultation with the Office of General Counsel as appropriate. OISS will serve as the hiring department's and employee's liaison with the attorney.
- 5. Fees.** The initial fees for the permanent residency application, including the Labor Certification and the filing of the I-140, are the responsibility of the hiring department, along with all immigration attorneys' fees related to the permanent residency application. Application and attorneys' fees related to an I-485 adjustment to status and other attorney assistance incurred by the employee for personal reasons are the responsibility of the employee.

### **C. Exceptions**

The policies set forth in this document are expected to cover all of the most likely instances involving University sponsorship of foreign nationals for H-1B work visas and Permanent Residence. In rare cases, based on exceptional circumstances, the OISS reserves the discretion to consider other work visa and Permanent Residence sponsorship options, if it is deemed to be in the best interests of the University. If the hiring department believes that exceptional circumstances may apply to a particular foreign national's sponsorship, please contact the Director of the OISS.

# Appendix A to Employment of Foreign Nationals Policy

## Sponsorship Procedures

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### **SECTION I. PROCEDURES FOR SPONSORING H-1B STATUS**

Application procedures, fees and processing times for the H-1B process can be found online at <http://www.stthomas.edu/oiss/scholars/h1bemployees/>.

### **SECTION II. PROCEDURES FOR SPONSORING PERMANENT RESIDENCY**

General information on the Permanent Residency process can be found online at <http://www.stthomas.edu/oiss/scholars/pr/>. OISS will connect the department, foreign national employee, and the immigration attorney to start this process once the appropriate St. Thomas approval has been obtained.

# Appendix B to Employment of Foreign Nationals Policy

## Frequently Asked Questions

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**1. What is considered a dependent as listed in the policy?**

A child under the age of 21 or a spouse is considered a dependent, per the Department of Homeland Security.

**2. Once an employee is hired, after how long can the department begin the H-1B or Permanent Residency process?**

There is no minimum time before the sponsorship process can begin. To ease the process, it's recommended to begin the permanent residency process within one year of the date on the offer letter.

**3. How do you define “specialty occupation” as listed in the policy?**

This is defined per immigration rules as a position that requires a minimum of a Bachelor's degree or its equivalent and that this requirement is common for this position in the industry. This position should be so complex or unique that it can only be performed by someone with at least a Bachelor's degree in a field related to the position and the field must be specified.

**4. How long will the sponsorship remain valid, and how long can the employee work for the position hired?**

St. Thomas will file for H-1B sponsorship for a staff or faculty position for the maximum period of time in the initial application (usually three years). This petition can then be extended for an additional three years. Any employment beyond that in H-1B status is dependent upon a pending Permanent Residency application. An employee can still leave the position at any time, and the sponsorship does not prevent St. Thomas from terminating the employee's employment.

**5. What is the liability to St. Thomas if we terminate someone's employment before the term of sponsorship expires?**

The hiring department is required to inform OISS immediately of a termination decision. St. Thomas is required to offer the terminated employee the cost of return transportation to the employee's home country. The terminating department is not authorized to arrange for return transportation; this is something OISS and Human Resources will determine with the employee.

**6. If we sponsor a part-time or full-time faculty member for three years, do I have to pay the prevailing wage during the summer?**

Yes, it's required that the position be paid the prevailing wage year round if St. Thomas sponsors the H-1B petition for the entire year.

**7. The employee I'm hiring is offering to pay the fees for their petition; is that okay?**

St. Thomas is required to pay the filing fees for the I-129 form and anti-fraud for H-1B sponsorship. If the employee wants the H-1B process expedited for their own personal reasons (travel, peace of mind), then the employee can choose to pay for premium processing from the employee's personal funds. If St. Thomas has a legitimate need to expedite the H-1B application for employment reasons (employment start date, etc.), St. Thomas must pay the premium processing fee. OISS will work with you to determine whether the circumstances require St. Thomas to pay the premium processing fee.

For Permanent Residency, the St. Thomas hiring department must pay the filing fees for the I-140 and the legal fees associated with this (estimated at \$3300-\$4000, depending on the circumstances). The employee will be responsible for paying the filing fees and any related legal fees for the I-485 adjustment of status. The employee will also pay any filing fees associated with dependents filing their change of status in relation to these petitions.