

Date: August 21, 2017

To: Academic Deans and Chairs

From: Dr. Jaishankar Raman, Assistant Provost for International Affairs, and Janice Lin, Associate Director of International Programs

Re: International Supplement to the Office of the Provost's Guidelines for Interviewing, Tracking, and Hiring Faculty

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This international supplement is intended to provide additional details for hiring departments considering a foreign national to fill a position. Please consult the Office of International Programs, as early as possible, if your department will consider a foreign national for an open position. The Office of International Programs will provide guidance on which visa category is the best fit for your position and potential employee, as well as guidance on the paperwork process and timeline to secure appropriate work authorization. In all cases, work authorization must be secured before the employee begins to work at Valparaiso University and file a Form I-9 with the Office of Human Resources.

### **Tenure-Track Faculty Positions**

The H-1B is a specialty occupation visa category for hiring international faculty or staff whose position requires the minimum of a bachelor's degree and who will perform work in a specialized skill area. The H-1B category must be pursued for tenure track faculty positions, if the individual does not otherwise have lawful permanent residency or work authorization (see section "Other Common Visa Statuses").

Faculty on H-1B visas, otherwise referred to as H-1B beneficiaries, are eligible for a maximum of six years in this visa category and may be eligible for Legal Permanent Residency sponsored by Valparaiso University, within 18 months of their offer letter and with approval from their Chair and Dean in consultation with the Office of International Programs.

### **Fees:**

All H-1B related fees must be paid by the University and the faculty may not reimburse the department/Valpo for these fees. For tenure-track positions, "the Provost's Office will cover the costs associated with filing the H-1B visa and PERM **certification** fee but will not cover the premium processing fee or additional PERM fees," as stated in the recruitment memo from the Office of the Provost dated September 2013. The processing of Form I-140 and Form I-485 are beyond the PERM certification process, and will not be covered by the Provost's Office. Law School will cover the costs for their H-1B and Permanent Residency beneficiaries.

### **Restrictions/Limitations:**

- If the individual has previously held J-1 status, he/she may be subject to a two-year home residency requirement. Additional processing time will be needed.
- Beneficiary may only work for an employer who petitioned for H-1B status on his/her behalf (but can have several employers simultaneously, as long as each has petitioned).
- Salary must meet prevailing wage requirements. (<http://www.flcdatacenter.com>)
- A new H-1B employee may enter the U.S. no earlier than the 10 day prior to the validity period of the H-1B petition. Department of Homeland Security may in its discretion grant 10 to 60 days after the validity period of the petition. The grace period is not automatic.

### **Advantages:**

Allows for "dual intent" to change from nonimmigrant to permanent resident status.

### **Disadvantages:**

- Extensive processing on part of department which can be time-consuming.
- Prevailing wage necessary.

### **Dependents:**

Spouse and children of H-1B are generally granted H-4 status, which allows for full-time study but does not allow for employment.

**Timeline:**

Internal processing at the OIP (before sending to USCIS) takes about 1 month. External processing with the university's immigration attorney (once petition is sent to USCIS) requires **3 weeks** to issue a Receipt Notice and approximately **4-5 months for an Approval Notice**. Premium processing can be used to expedite the receipt of the Approval Notice and can be paid via department or Dean funds or passed on to the beneficiary (currently \$1225). If premium processing is used, USCIS will issue a decision within **15 calendar days** of USCIS receipt. Please keep in mind that internal Valpo and USCIS processing times are subject to change based on processing volume.

Currently, premium processing is being suspended temporarily to allow USCIS to catch up on their back logs. We are hoping and expecting that premium processing will be resumed in the Fall of 2017.

**H-1B Process:**

1. **Search and Screen Process:** The OIP encourages the Search Committee Chair and/or Department Chair to keep records of the search and screen process, should an eventual application for lawful permanent residency be supported. See section on permanent residency below.
2. **Phone Interview:** The Search Committee Chair and/or Department Chair can ask the candidate(s) during the phone interview, "Are you legally authorized to work in the United States?" Please inform the candidate that the search committee will consult with the Office of International Programs on what steps the University will pursue to secure work authorization. Please take notes on any details the candidate volunteers and consult with the OIP.
3. **Verbal Offer & Verbal Acceptance:** By the time you offer a position to a candidate, you should have already consulted with the OIP regarding the next steps. The salary offered should meet the minimum prevailing wage determination as established by the Department of Labor: <http://www.flcdatacenter.com/>. Contact the OIP that you have offered the position and the candidate has verbally accepted the position.
4. **While the contract is being drafted and negotiated,**
  - a. OIP will ask Beneficiary to collect documents and complete the "Employee Information Form C."
  - b. OIP will ask Department Chair to complete "Beneficiary's Proposed Position in the United States Form B"
5. **Signed Contract:** Once the contract is signed and filed with the Office of the Provost, OIP will send the required documents to the immigration attorney to prepare the USCIS and Department of Labor forms.
6. **Process for OIP and immigration attorney:**
  - a. Identify prevailing wage and offered wage meets H-1B requirement.
  - b. File a Labor Condition Application (LCA) with the Department of Labor. Notice of Filing of LCA to be posted in two different locations for 10 days.
  - c. Within approximately 7 days from filing, the LCA is approved and the OIP sends *CERTIFIED* LCA and H-1B petition (various forms including Form I-129) to the Assistant Provost for International Affairs for signature and return.
  - d. Once the attorney receives the certified and signed LCA, signed petition, and the processing fees, the petition is filed with USCIS. Within approximately two to three weeks, the University will receive an official "Receipt Notice."
  - e. Within approximately four to five months the University should receive an approval notice from USCIS. The Approval Notice and supporting documents will be ready for pick-up at the OIP.
7. **Once the Beneficiary arrives to campus,** please inform him/her to check-in with the OIP and to report to Human Resources to file an I-9 Form.

Please note that if there is a change in employment locations, job responsibilities, or reduction in salary, it may be necessary to refile the H-1B and labor certification application. The Provost Office generally does not cover the filing and legal fees associated with such amendment. The Department will be responsible for the fees and the faculty may not reimburse the department for these fees.

All costs associated with the preparation, filing, and obtaining an H-1B visa including attorney fees range from \$2,000 to \$3,500).

## LEGAL PERMANENT RESIDENT FOR DEPARTMENTS

Also known as *green card*, Legal Permanent Resident (LPR) simply permits foreign nationals and their dependents to permanently remain and be employed in the U.S. For this purpose, Valparaiso University assumes the role of a sponsor and all the responsibilities associated with the process including: all advertisement and recruitment; all costs associated with the preparation, filing and obtaining a labor certification, and record keeping. In addition, departments are required to document that there is a reasonable expectation of continued employment for an indefinite period of time and to keep detailed records of the search and screen process.

The university will sponsor tenured and tenure-eligible faculty for permanent residence at the request of the appropriate department, when it is endorsed by the Dean in consultation with the OIP.

### Permanent Resident through Labor Certification (PERM):

Department of Labor regulations require that employers to test the labor market so that U.S. citizens and permanent residents are not discriminated from the process. The main goal here is to see if there are qualified citizens and permanent residents, and to certify to the Dept. of Labor (DOL) of the labor conditions. While it appears counter-intuitive to advertise for a position that is not vacant, please keep in mind that the primary purpose is to test the market. If no qualified citizen or permanent resident is found, then the labor certification process can proceed.

### Optional Special Handling for Faculty:

DOL regulations do make some exception to the testing of the labor market, especially for faculty hires. This requires that the university file a labor certification **within 18-months of the date of offer predicated on the following:**

- A competitive recruitment was conducted
- One print advertisement (i.e., Chronicle of Higher Education). A copy of the tear-sheet that shows the name and date of publication is needed. Please forward it to the Provost Office.
- For Special handling, the University does have the option to potentially use an on-line posting in a national publication related to the occupation (e.g., The Chronicle on-line) for at least 30 days. Additional posting in professional web site or other on-line medium.
- For on-line posting, please print a copy from the website when the job is posted and before it is taken down. Please include the date of posting and the URL of the website. Send a copy of the online job posting to the Provost Office.
- ***Do not use language such as “substantial or significant professional experience”. Either do not include this language or do quantify the experience.***
- ***If the advertisement contains any requirements for the position, the candidate must be able to document that he/she gained all of the requirements prior to joining the university, including obtaining a degree if the advertisement states that it is required for the position.***

**Note: If a department or the beneficiary misses the 18-month window, or if a print/on-line advertisement was not used, or if the print/on-line advertisement does not qualify for the special handling procedure, then the standard labor certification regulations apply (see under Standard Labor Certification below).**

### Process Flow for PERM:

- Department consults with OIP regarding request to process PERM;
- Attorney files Prevailing Wage Determination (PWD) with the Department of Labor (DOL). Note: it is currently taking 10 weeks for DOL to issue prevailing wage determinations.
- OIP will coordinate preparation, filing and obtaining labor certification (Form ETA 9089) even before PWD is filed. A notice of the availability of the offered position is to be posted for 10 business days (certification will take 6-9 months);
- Upon certification, attorney drafts form I-140 for OIP review and signature;

- Attorney files form I-140, immigrant petition, with United States Citizenship and Immigration Service (USCIS);
- Upon approval, attorney prepares and files form I-485 (adjustment or "green card") application with USCIS.
- Ideally, the University should commence the special handling process within six months of the original offer as stated on the original offer letter (i.e., the date the offer letter was issued).

### **Standard Labor Certification:**

This category is used in the legal permanent resident process to sponsor staff, non-tenure eligible faculty and researchers who meet sponsorship eligibility as per university policy. The regulations are more prohibitive than the labor certification for tenure-eligible faculty in that, every applicant who is minimally qualified must be considered and employers must follow advertisement and recruitment guidelines as established by the Department of Labor.

### **Sponsorship Responsibilities:**

In order for a labor certification to be filed under PERM, the following steps must be taken:

- Discuss request to Office of International Programs;
- Departments must meet 100% of the prevailing wage;
- Non-research staff position descriptions must be approved by HR;
- Pay all costs associated with the preparation, filing and obtaining a labor certification including attorney fees and advertisements (ranging from \$1500 to \$3000);
- All minimally qualified individuals as stated in the job advertisements must be considered;
- Records must be kept for five years from the date of the PERM approval.

### **Advertisement:**

- For Special Handling: Must advertise in the following: Chronicle of Higher Ed., 1 professional journal, and possibly other avenues as suggested by attorney. A copy of the tear-sheet that shows the name and date of publication is needed. Please send a copy to the Provost Office.
- Alternatively, an advertisement can be posted on-line on the career page of a national publication related to the occupation (e.g., The Chronicle on-line) for at least 30 days. For on-line job posting, please print out from the website when the job is posted and before it is taken down. Please include the date of posting and the URL of the website.
- If the advertisement contains any requirements for the position, the candidate must be able to document that he/she gained all of the requirements prior to joining the university, including obtaining a degree if the advertisement states that it is required for the position.
- The **advertisement text** must contain the following:
  1. Job Title (The job title advertised must correspond with the actual title in the offer letter and Datatel).
  2. Job Duties
  3. Job Requirements
  4. Experience, if required, must be qualified and quantified. Do not use language such as "substantial or significant professional experience".
  5. "Teaching" must be a listed job requirement.
  6. Degree required must be specified as well as the field in which it was earned, or a "closely related field."
- For Standard Labor Certification/Basic PERM process, the University is not advertising in the Chronicle, instead, the advertising is coordinated by the attorney's office.

**Process flow:**

- After recruitment period, department selects and President offers position;
- Sponsoring department prepares a recruitment summary report;
- OIP will notify attorney to begin the process;
- Attorney drafts labor certification and submits to OIP for review;
- Upon approval, attorney files PWD and labor certification with Department of Labor (DOL);
- Upon certification, attorney prepares and submits form I-140 (immigrant petition) to OIP;
- OIP reviews and collects signatures for the I-140;
- Attorney submits to US Citizenship and Immigration Service (USCIS);
- USCIS approves, and attorney files form I-485 (adjustment application or "green card").

**Record Keeping Requirements:**

The following documents must be kept for five years from the date of the PERM approval:

- Copies of all resumes and applications
- Completed resume review
- Copy of recruitment report
- Copies of all advertisements
- Copy of prevailing wage

**Common Visa Statuses for International Faculty & Staff:**

Types of Visas	Description of Status	Responsible for Process	Fees	Brief Description of Process & Timeline	Additional References
F-1/J-1 Student	Full-time Valpo enrolled degree seeking students and short-term exchange students	Janice Lin/Andrew Knox	Individual pays OPT application fee (\$410) to USCIS	CPT - work authorization before graduation; OPT is mainly for post-graduation work and takes 3 months to process, prior to work start date	Can transition to H1B and PR; OPT is 12-36 months depending on major
F-1/J-1 Student	Full-time non-Valpo enrolled degree seeking students and short-term exchange students	n/a - individuals file work authorization with their home university and Human Resources at Valpo should verify work authorization via the I-9	Individual pays OPT application fee (\$410) to USCIS		Can transition to H1B and PR; OPT is 12-36 months depending on major
B-1/WB Visitor, B2/WT Visitor	B-1 is visitor visa for business, WB is visitor on business who has visa waiver. Short-term visitors who come for observation, consultation, or to give a lecture	Janice Lin	Fees paid by the individual	Varies based on visa/consulate. The visitor is limited to a stay of 90 days or less without extension for the purpose of consultation and/or observation. The visitor should perform the compensated activities for 9 days or less while at VU. They cannot be compensated by more than 4 other	

				entities during the previous 6 months. They cannot be paid for work; "reasonable" honorarium is possible with restriction. Also, the visitors may only be paid "reasonable" reimbursement for incidental expenses, including accommodations, meals, and travel.	
J-1 Visiting Scholars/Professors	On Valpo DS-2019 immigration document: Temporary status: short term scholars, research scholars, visiting professors, performers, etc. **Please consult OIP before hiring any J1 visa holders with non-Valpo DS-2019.	Janice Lin/Emily Prough	Individual pays SEVIS fee (\$180) to USCIS, sometimes fee is covered by exchange program (i.e., Zhejiang University scholars) or hiring department (optional for employer). An additional \$160 Visa fee is usually paid by the individual. Generally here for a short duration (i.e., a few months to one year) initial approval can be for 3 years, can be renewed to 2 more years in some qualifying categories.	Varies based on visa/consulate	Non Tenure track; eligible to work at VU depending on the circumstances; check with OIP before hiring. <b><i>They and their J-2 dependents must obtain health insurance that meet State Department's requirement. The VU insurance for faculty and staff does not meet the requirement. Check with OIP for rates and terms.</i></b>
H-1B Beneficiary	Specialty occupation employment visa for staff, tenure-track	Janice Lin	\$460 I-129 Filing Fee; \$500 Fraud Fee; \$1000 Legal Fees; \$1225 Optional premium processing	4-5 months with USCIS for Receipt Notice (takes 1 month internal processing time to prepare application). Optional premium processing expedites process to 15 calendar days once USCIS has issued receipt notice. <del>Status is valid up to 6 years of employment.</del> Initial period of stay up to 3 years. Extension is up to 3 more years. Cumulative duration is 6 years.	Consult with Janice Lin; Reference Faculty Recruiting Guidelines
TN (Canadian/Mexican National)	Employment for Canadian and Mexican citizens in certain fields	Janice Lin	\$460 I-129 Filing Fee; \$800 Legal Fees; \$1225 Optional premium processing	3-4 months with USCIS for Receipt Notice (takes 1 month internal processing time to prepare	Consult with Janice Lin; Reference Faculty Recruiting Guidelines

			Or \$50 filing fee at the Border.	application). Optional premium processing expedites process to 15 days once USCIS has issued receipt notice. No time limit on work authorization, as long as individual remains in temporary status.	
O-1 (Extraordinary Ability)	Reserved for extraordinary individuals who have risen to the very top of their field	n/a - uncommon (more typical at R-1 institutions)			
PR (Permanent Resident)	Faculty, research staff, non-tenure track faculty and some non-research staff are eligible for employment-based immigrant visa.	Janice Lin	Varies based on attorney fees	Timeline varies based on nationality	Consult with Janice Lin; Reference Faculty Recruiting Guidelines
J-2 Dependent	Spouse and dependents of J1 student, scholar, and visiting professors can apply for Employment Authorization Document (EAD) from USCIS. The J-2 may begin employment only after receiving the EAD from USCIS.	n/a -- International Office of the J1 visa holder will guide the J2 to apply for employment authorization.	Individual pays SEVIS fee to USCIS	It takes 3 months to process	Income from the spouse's or dependent's employment may be used to support the family's customary recreational and cultural activities and related travel, among other things. Employment will not be authorized if this income is needed to support the J-1 principal alien.
<b>* Always check with Office of International Programs if there are questions.</b>					

References: University of Chicago Office of International Affairs, Northwestern University International Office