HIRING OF INTERNATIONAL FACULTY

H1B VISA AND PERMANENT RESIDENCY: WHAT’S THE DIFFERENCE?

An H-1B visa is issued to a specialty occupation and requires a bachelor’s degree. H1 visas are temporary, nonimmigrant work visas that are issued, in most instances, for a maximum of six years - typically in two allotments for three years each.

Permanent residency (aka “green card) is legal permanent residency. Green card holders are not limited to the amount of time they are allowed to remain legally in the United States, but they must renew their green cards every 10 years.

COSTS OF HIRING INTERNATIONALS

H1B Costs
The cost for an H1B is approximately $4,000 as per below and MUST be paid by the employer:

$460 filing fee  
$500 anti-fraud fee  
$1410 premium processing *  
$1500 attorney fee  
$100 attorney expenses  
$3970

* Premium processing is typically required due to the long processing times of USCIS.

H1B Extension Costs
The cost for an H1B extension is approximately $1,500. An extension is needed once the original H1B of 3 years expires. However, if premium processing is needed, then an additional $1,410 will be paid, thus increasing the costs to $2,910 ($1,500 + $1,410).

Many times, the H1B employee’s driver’s license will expire with the expiration date of the H1B even though the employee can work for an additional 240 days past the expiration date. Thus, many employees want premium processing on the H1B extension so they can renew their driver’s license. There is a question as to whether this reason is one that is personal (allowing the employee to pay fee) or one that is integral to employment (which would require USM to pay).

Permanent Residency Costs
The cost for permanent residency is approximately $8,500 if the department chooses to pay for everything. Currently, there is no official policy regarding permanent residency for faculty. However, it is customary for the department to only pay what is absolutely required by the federal government which is the cost for the labor certification and any advertising if necessary. These costs are typically around $2,500 - $3,000. Any remaining attorney fees and costs are borne by the employee and our chosen immigration law firm works out payment arrangements.

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If a department hired a tenured-track faculty member, the actual costs to the department would depend on whether the department agreed to pay for all costs of permanent residency or only that which is required.

$4,000 H1B  
$8,500 Perm Res (if dept paid all costs)  
$12,500

$4,000 H1B  
$3,000 Perm Res Labor Certification (required)  
$7,000

If H1B extensions are needed during this time, this would cost an additional $1,500 to $3,000 (depending on whether premium processing was necessary).

HIRING FAQs

Can a school/department decide that it does not wish to hire someone who will require an H1b or other work visa?

Yes. An employer has no legal obligation to commence an immigration case. Therefore, decisions not to recruit, or to hire or fire individuals based solely on their need for visa sponsorship, either currently or in the future, are not generally actionable under the Immigration and Nationality Act’s (INA) anti-discrimination provisions since temporary visa holders are not protected from citizenship status discrimination.

However, the best time to make this decision is before you advertise for the position. If the department does not wish to hire someone who will require visa sponsorship, that is their prerogative and there is nothing legally wrong with doing so. However, it is useful (though not required) to state in the job ad that the department will not sponsor applicants for work visas.

If the department did not put in its ad that it did not wish to hire internationals, may it still exclude prospective international applications who will require an H1B?

Yes. Within the last couple of years, the USM job application has been modified to ask the following questions:

Are you currently authorized to work lawfully in the United States on a full-time basis? Yes or No

Will you now or in the future require sponsorship for employment visa status (e.g., H1B visa status)? Yes or No

To answer the first question in the affirmative, the applicant must have some form of work authorization (F1 OPT/H1B/Perm Residency). This question came straight from DOJ.

The follow up question, then inquires if the applicant will now or in the future require sponsorship for employment visa status (H1B). This question also came straight from DOJ.

* See attached Chart titled “How to Interpret Responses to Required Immigration Status Questions?”

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GENERAL QUESTIONS ABOUT H1Bs

How long does this petition process take?

It takes about one month for the University and Ware Immigrations to prepare an H1B packet for filing with USCIS. Once filed, USCIS can take 6 months or longer to adjudicate the petition. Until the H1B approval has been granted, the candidate cannot work. To avoid the lengthy process at USCIS, a premium processing option is available for an additional cost of $1410 which provides for action on a petition within 15 days.

What happens if the University needs to discipline and/or suspend an H1B employee?

An H-1B employee must be paid the required wage during all times that the H-1B is under the sponsorship of the university. It is the Department of Labor’s position that the university is responsible for payment of the wage even during any period of suspension or discipline.

What happens if the University terminates an employee in H-1B status? What if the employee resigns?

Whether the termination is immediate or whether the employee has submitted his/her notice, the university should establish a firm “date of termination.” Once the termination/resignation is effective, the employee’s H-1B status is also terminated. The university is further required to immediately notify USCIS once the termination/resignation is effective. This must be done in order to end the University’s legal obligation to pay the employee. Therefore, contact Subrina Cooper if you have terminated an H1B employee.

Is it true that if the University terminates an employee in H-1B status, the University is liable for the employee’s return transportation costs to their “last place of foreign residence”?

Yes. Per federal statute, the employer is liable for these costs if the foreign national is terminated (or otherwise dismissed) from employment before the end of the period specified on the LCA/H-1B petition. However, if the FN resigns, the university is not liable for these costs.

Are the dependents of the H1B employee sponsored by the university?

No. It is a violation of state law for the University to cover the visa costs for dependents (spouses and minor children) of an H-1B employee. These costs must be borne by the H1B employee.

What other changes in an H-1B employee’s position could affect the validity of his/her status?

- Change of job duties: While minimal job duties usually won’t trigger the need for an amended position, “material” changes in the job duties usually will.

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• **Change in wage:** particularly if there is a cut in pay.
• **Change of location of employment:** If the university transfers the employee to another campus or off-site location that was not originally listed on the H1B petition, the university may have to file a new LCA and H-1B petition.
• **Discipline and/or Suspension:** An H-1B employee must be paid the required wage during all times that the H-1B is under the sponsorship of the university.
• **Leave of Absence:** Regulations on leaves of absence (maternity, FMLA, extended sick leave, temporary disability, etc.) are best addressed on a case-by-case basis.

**THE INTERVIEW/OFFER LETTER**

If an international applicant is chosen for an interview for a tenured track position (or any long-term job), then there should be a conversation about permanent residency. Since the H1B visa is only good for a maximum of 6 years, the University will want the applicant to apply for permanent residency no later than the 5th year of employment.

At this point, it would be wise to communicate to the candidate what your school/department is willing to pay toward permanent residency:

1) Only that which is required by the federal government: labor certification and any necessary advertising ($2,500 - $3,000);
2) A sum certain toward the process (Ex: $5,000); or
3) All fees and costs associated with permanent residency.

Everyone should be on the same page as to what will and will not be paid for toward permanent residency.

If an offer is made to the international candidate, the offer letter needs to outline what the arrangement is for permanent residency. If the academic unit agrees to pay additional monies over and above what is required by law, this should be spelled out in the offer letter.

Example:

1) **Only pay what's required (Labor certification and advertising)** - *In order to secure your employment, the School agrees to pay the costs of the labor certification and any related advertising costs with regard to your application for permanent residency. You are responsible for all other fees and expenses of the permanent residency process.*

2) **Sum certain** - *In order to secure your employment, the School agrees to pay the sum of X amount [amount to be less than $10,000] toward the fees and expenses of your permanent residency process. You, however, are responsible for all fees and expenses of the permanent residency process that exceed the maximum amount specified above. You are also responsible for all tax liabilities that may occur as a result of such payment.*

3) **All fees and costs** - *In order to secure your employment, the Department agrees to pay for all fees and expenses of your permanent residency process up to a maximum of $10,000. You, however, are responsible for all fees and expenses of the permanent residency process that*
exceed the maximum amount specified above. You are also responsible for all tax liabilities that may occur as a result of such payment.

NOTE: If the academic unit chooses to pay more than what is required by federal law (either a sum certain or all fees and costs), then an employment contract addendum needs to be executed by the employee so that we are in compliance with Mississippi state law.

Contact Subrina Cooper if your department agrees to pay more than what is required by federal law so she can ensure an employment contract addendum is executed. Also contact Subrina Cooper if you would like for her to review your offer letters to foreign nationals.

OTHER THINGS TO REMEMBER

If the employee seeks an employer-based permanent residency petition, then they MUST use our attorney – Ware Immigration. We cannot allow employees to use outside law firms to obtain permanent residency based upon employment.

The Office of General Counsel, specifically Associate General Counsel Subrina Cooper, facilitates the permanent residency process and should be your point of contact with regard to questions. The Office of Human Resources, specifically Moriah Rouse, facilitates the H1B process with oversight from Assoc. Gen. Counsel Subrina Cooper. Moriah Rouse should be your point of contact with regard to questions about H1B.

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How to Interpret Responses to Required Immigration Status Questions?

The following table provides additional information to help you understand what the response to the following questions may mean for a hiring unit and when it may or may not be appropriate to ask follow-up questions about immigration status according to the U.S. Department of Justice.

- **Are you currently authorized to work lawfully in the United States on a full-time basis?** Yes or No
- **Will you now or in the future require sponsorship for employment visa status (e.g., H1B visa status)?** Yes or No

<table>
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<tr>
<th>Response to Authorization to Work Lawfully - Question 1</th>
<th>Response to Need for USM Sponsorship Question 2</th>
<th>What This Response Means to USM Hiring Units</th>
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| Yes                                                    | Yes                                              | When a candidate answers “yes” to both questions, the hiring unit is allowed to ask further questions about immigration status without risking liability or a discrimination charge. Additional questions may include:  
  1. What is the basis of your current work authorization?  
  2. When does that work authorization expire?  
  3. Have you ever been on a J-1 visa?  
  
**Petitioning for a USM Employment Visa:** Before a formal job offer is made, ensure that the individual is eligible for continued employment and is not required to return to his/her home country before reentering the U.S. on another type of employment visa. |
| Yes                                                    | No                                               | When a candidate answers “yes” to the first question and “no” to the second question, the hiring unit is not allowed to ask further questions about immigration status. Asking further questions risks a discrimination charge.  
  
**Petitioning for a USM Employment Visa:** Based on this response, the candidate is indicating that he/she does not need USM to sponsor a petition for an employment visa. Candidates who answer in this manner are likely U.S. citizens or permanent residents. |
| No | Yes | When a candidate answers “no” to the first question and “yes” to the second question, the hiring unit is allowed to ask further questions about immigration status without risking liability or a discrimination charge. Additional questions may include:
   1. What is your current immigration status?
   2. When does that status expire? |
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<td>No</td>
<td>No</td>
<td>When a candidate answers “no” to both questions, he or she is not eligible for employment. The candidate likely misunderstood the questions and additional follow-up with the candidate is needed. Contact Human Resources or your HR partner for guidance.</td>
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