



Department of Human Resources
Office of Foreign Faculty and Scholars

**VISA PROCESSING MANUAL
FOR FOREIGN FACULTY, RESEARCHERS, AND TECHNICAL STAFF**

This manual presents a general overview of procedures for processing visas that are most commonly used at Case Western Reserve University. The office of Foreign Faculty and Scholars requests that university departments pay close attention to the processing times for the various visas. Processing delays at the Department of Labor (DOL) and the U.S. Citizenship and Immigration Service (USCIS) can be expected. Timely filing generally results in timely appointments.

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INTRODUCTION

The office of Foreign Faculty and Scholars (FFS) is part of the Department of Human Resources at CWRU, is the university's liaison with the federal agencies that are concerned with visa-related matters. The office was created to serve the university as the institutional employer of non-immigrants and to facilitate immigrant and/or permanent resident status pursuant to university criteria. Thus, the activities of FFS are governed by university internal processes and by federal laws and regulations, which are upheld by the U.S. Citizenship and Immigration Service (USCIS), the Department of Labor, the U.S. Department of State, and the Internal Revenue Service (IRS). The office is not involved with Affirmative Action and/or Equal Employment Opportunity (AA/EEO) matters and can neither assist nor advise in this area. Please contact Human Resources to learn if the position to be held by a nonimmigrant needs to be posted. If so, AA/EEO activity should be accomplished before visa preparation begins.

The FFS office is also responsible for employment eligibility verification (I-9), W-4, tax status confirmation, and determining whether or not to file tax treaty exemption forms with the IRS (please see section on Federal Taxes). Therefore, all foreign employees and visitors are required to bring passports and/or USCIS employment authorization to the FFS office promptly upon arrival.

Physical presence in the United States does not guarantee that someone is eligible for employment under the Employer Sanctions law of 1986. Neither does the possession of a Social Security Card prove that the individual is permitted to work in the United States. Non-immigrants have been admitted to the United States by the USCIS for specific periods of time to engage in specific, authorized activities. There are conditions of entry for each visa category. Generally, a nonimmigrant cannot change employers or his/her activity in the United States unless the USCIS approves the change. On the other hand, "Green Card" holders (that is, Permanent Residents), Refugees, and people granted Asylum by the U.S. Government have the same rights and privileges as United States citizens to be hired or terminated. If you have any questions about someone's citizenship and immigration status or eligibility to work in the United States, please contact FFS at 216-368-4289.

MISCELLANEOUS VISA CLASSIFICATIONS

Listed below are nonimmigrant classifications, which are not eligible for work authorization unless indicated:

B-1/WB Visitor for Business. B-1s/WBs are eligible to receive an honorarium and/or reimbursement of expenses. Federal taxes are withheld at source at the rate of 30%, unless the B-1/WB is eligible for Tax Treaty.

B-2/WT Visitor for Pleasure (tourists). They are not eligible to receive compensation from U.S. sources, including honoraria.

H-4 Spouse/Dependent of H-1. They are not eligible for employment in the U.S.

TD Spouse/Dependent of TN. They are not eligible for employment in the U.S.

WORK VISAS MOST COMMONLY USED AT CASE

F-1/PT or F-1/OPT Student with Practical Training/Optional Practical Training

Employment procedures of F-1PT(s) or F-1/OPT(s) are not employer specific. The student is required to file with USCIS for an Employment Authorization Document. A letter of appointment or offer letter is required from the employer.

F-1/PT or OPT individuals are authorized by the USCIS to accept employment in their academic field (or a closely related discipline) for a maximum of twelve (12) months. They may also change employers in this 12-month period without informing USCIS. Furthermore, they are eligible to change their nonimmigrant status in order to accept employment of longer duration (see section on Employer Sanctions and/or Change of Nonimmigrant Status). These prospective employees must have Form I-766 Employment Authorization Document (EAD) in their possession before starting to work. The International Student Advisor at the F-1(s) degree-granting institution in the United States must recommend Practical Training to USCIS. The F-1/PT is generally exempt from FICA and may claim tax treaty benefits when filing IRS Form 1040NR annually. Change of nonimmigrant status to Temporary Worker, H-1B, may occur after starting employment if the employment will exceed the period of Practical Training by at least three months. If the employer and employee choose to go ahead with this change of status (F-1/PT to H-1B), the FFS office requests a minimum of four months advance notification in order to file with USCIS in a timely manner. Failure to receive an approval from USCIS before the F-1/PT(s) expiration date means the employee must be removed from payroll until the Approval Notice for the H-1B is received.

H-1B Temporary Worker, Specialty Occupations

1. Please call or make an appointment with the FFS office to discuss the prospective appointment as soon as possible.
2. Send or give the Information Needed from Foreign Visitor (H-1B) form, the I-129 Rider form and a list of required documents to the prospective employee. Provide a job description, minimum education, and experience requirements along with the proposed salary to FFS. You may obtain the list of required documents from FFS.
3. In compliance with the DOL regulations, reconcile any salary differences that may have occurred as a result of the Prevailing Wage Determination.
 - a) Initiate the Recommendation for Appointment of Temporary Worker (H-1B) form and route it according to the instructions on the form. This will eventually result in a letter of appointment or hire from the Dean's office, which should be sent to FFS along with the form. Please send us the original copies of both letter and form.
 - b) Obtain a university check(s) to cover all government filing fees. You may obtain a current fee list from FFS. If Premium Processing with USCIS is being requested, add a separate university check for \$1,000 (also payable to: USCIS).
4. Post the Labor Condition Application per instructions. FFS will send this document to you by campus mail.

Please discuss all pertinent issues with FFS prior to offering a position to an H-1B or a prospective H-1B because of the regulatory requirements, which involve both the DOL and the USCIS. Please

note that only the Director of FFS or designee is authorized to sign Labor Condition Application (LCAs), I-129s and Supplement Hs in behalf of Case Western Reserve University. You may not hire outside counsel.

H-1B employment is employer specific, which means that the H-1B beneficiary can work only for the employer who obtained an approved LCA from the Department of Labor. The LCA is a prerequisite to obtaining an H-1B from USCIS. Currently, the maximum stay in the United States on an H-1B visa is six years regardless of the number of employers the H-1B has had or the number of petitions that have been filed with USCIS.

H-1Bs are permitted “dual intent”, which means both the H-1B and his/her employer will comply with H-1B regulations, but the H-1B visa holder may also potentially petition to immigrate. Please note that those who have been in the U.S. for six years are required to be absent from the U.S. for one year before re-entering again as an H-1B.

Please contact FFS *at least* four months before the anticipated start date of employment for an H-1B at Case. Six months is not too early to begin processing the paperwork for an H-1B petition.

Graduates of foreign medical schools may not principally practice medicine. Patient care *incidental* to teaching and/or research *is* permitted and must be documented to USCIS. Please follow the instructions on the “Recommendation for Appointment of Temporary Worker (H-1B)” form.

The position to be held by an H-1B must require at least a bachelor’s degree (B.A. or B.S.). Therefore, the H-1B visa holder must have at least that level of education. If the degree was earned in a country other than the United States, a professional evaluation may be necessary. An evaluation may also be necessary if the degree on the diploma does not match the area of employment for the H-1B (for example, a B.S. in Chemistry and an appointment in the Department of Biology). A list of evaluators is available at FFS. There is a fee charged for the evaluation, which is, in general, paid by the degree-holder. Occasionally, in lieu of a bachelor’s degree, special circumstances may apply which require evidentiary documentation to be collected: every three years of proven progressively responsible experience equals one year of college, pursuant to USCIS regulations covering only H-1Bs.

Steps for Filing H-1B

1. Employers of H-1B Temporary Workers are required to pay either the employer’s actual wage or the prevailing wage for the job to be performed in this geographic location as determined by the U.S. Department of Labor, whichever is greater. Therefore, departments must forward a complete job description as well as education and experience requirements along with the proposed salary to FFS.
2. Any salary issues, which might arise, must be settled before the employer files to obtain approval of the LCA by the DOL. The LCA contains conditions of employment, which are legally binding on the employer: job title, salary, and inclusive dates of employment. DOL will *not* approve retroactively the beginning date requested by the employer and USCIS will accept only those inclusive dates approved by DOL. In addition, copies of the LCA must be posted in two places within the employer’s establishment: one copy in the department and the other copy outside the Employment office, located in 304 Crawford Hall. The LCA is not a recruitment effort. The purpose of the posting is to advise the public of the conditions of employment.

3. FFS receives supporting documents from the department and the prospective H-1B prior to filing with USCIS.
4. FFS files with the USCIS and waits for their Approval Notice.

Please be aware that if the employer terminates employment *for any reason* prior to the conclusion of the time frame requested by the employer, the employer is liable for reasonable cost for the H-1B to return to his/her homeland. In addition, failure of the employer to maintain the approved salary and the approved payroll title may subject the employer to fines and loss of privilege in obtaining approved LCAs and permanent Labor Certifications (to immigrate) for one year in addition to paying back wages. If a promotion is contemplated after the LCA and H-1B petition have been approved by the appropriate Federal agencies, it is imperative that departments immediately contact FFS to file a new LCA and I-129H; after approval by USCIS, the promotion can occur. You are also required to discuss plans for promotion with Human Resources.

Under no circumstances should an H-1B leave the United States while petitions are pending at USCIS. USCIS views such departures as abandonment of the petition. When such a departure occurs, the petitioner/employer is required to notify USCIS, request USCIS to transmit approval to a specifically identified U.S. Consul, and submit an additional fee. These procedures may require the H-1B to remain out of the United States for several months.

H-1Bs are liable for FICA withholding but may be able to benefit from Federal tax treaties with their countries of principal residence.

J-1 Exchange Visitor

1. Complete the “Recommendation for Appointment of Exchange Visitor, J-1 Visa” form and route according to instructions.
2. Send “Information Needed from Foreign Visitor” form to the appointee.

Exchange Visitors (EVs) are only permitted to engage in activities identified on the DS-2019 visa document. CWRU sponsors an Exchange Visitor Program for students, researchers, visiting faculty, short-term scholars or specialists. The source and the amount of financial support for the Exchange Visitor are listed on the Form DS-2019. Please note that the Code of Federal Regulations (22 CFR 514) specifies that J-1s may not be candidates for tenure track appointments.

Since September 1994, all EVs and their visa dependents (J-2s) are required under regulations to purchase and maintain health care insurance of at least the following amounts: \$50,000 medical benefits per accident or illness; \$10,000 medical evaluation; \$7,500 repatriation of remains; \$500 maximum deductible for each occurrence.

Exchange Visitors who receive university fringe benefits are automatically covered. Research scholars and those EVs who are self-funded or funded by external sources can purchase insurance at the University Health Service or any other company that covers international visitors/students. Brochures are available from FFS.

J-1 Faculty, Researchers, Specialists and Short-term Scholars

The FFS office issues DS-2019(s) for all J-1 Exchange Visitor appointees, other than students. Please allow a reasonable period of time before the start date of the EV(s) employment so that FFS may process your request in a timely manner. Exchange Visitors who come as Visiting Faculty, Researchers, and Short-term Scholars may receive funding from a variety of sources, which are

identified on the DS-2019. Please note that any amount identified as a Sponsor obligation must be paid to the appointee, and no reduction of either the amount or the dates of appointment is permitted. Transfer from one Sponsor to another must follow a procedure specified by the DOL. Please contact FFS for assistance the event that a J-1 Exchange Visitor will be transferring from another institution to CWRU. Exchange Visitors who are sponsored by colleges and universities to participate in teaching, research or specialist activities have a minimum stay of 21 days and a general maximum stay of 42 months in the United States. DOS may permit an Exchange Visitor's stay to be extended for additional periods of time. This is referred to as an Extraordinary Extension and may be requested for the period of up to one year. It requires a letter from the department detailing why the extension is needed, electronic submission of the request by FFS through the DOS SEVIS database, and a fee of \$198.

Universities may sponsor graduates of foreign medical schools to participate in teaching and/or research activities as long as patient care is *incidental* to the primary goals of the appointment. Please note that Federal law prohibits these graduates of foreign medical schools from principally practicing medicine.

Exchange Visitors cannot generally change the activity that is described on the Form DS-2019. In addition, some, but not all, EVs, including J-1 students and J-2 dependents are subject to the two year home country physical residence requirement, (212(e)). This means that they may not change their nonimmigrant status while in the United States, enter the United States in certain other nonimmigrant classifications, or become an immigrant/permanent resident until 212(e) is satisfied or waived.

Short-term Scholars

Short-term Scholars are in the United States lecturing, consulting, observing, demonstrating special skills, participating in professional meetings, etc. have a minimum stay of one (1) day and a maximum stay of six months. Please fill out the Appointment for Short-Term Scholar form and send it to FFS. No appointment letter and/or offer letter from the Dean is required. The Short Term Scholar will receive a Form DS-2019 for a J-1 visa.

J-1 Students, Academic Training.

Exchange Visitors who are categorized as students on the Form DS-2019 may be eligible for up to 36 months of Academic Training in their academic fields of study, depending on their degree. Authorization is granted by the current Exchange Visitor Sponsor and prospective employees are required to have written confirmation in hand prior to beginning their employment at CWRU. They are generally exempt from FICA withholding and may claim any applicable Federal tax treaty benefits when filing IRS Form 1040NR annually.

J-2 Visa dependents of J-1; can accept employment after applying for and receiving an Employment Authorization Document (I-766) from USCIS; employment is not employer specific; J-2s are liable for FICA and are *not* eligible for tax treaty benefits.

O-1 Extraordinary Ability in...Science...Education, which has been demonstrated by sustained national or international acclaim

1. Faculty and/or Chairmen are requested to schedule an appointment with FFS for determination.
2. Secure initial appointment for at least one year but not more than three years (Dean's letter of appointment).

3. Obtain Peer Group consultation that evaluates the prospective O-1's abilities and achievements.
4. Complete supporting documentation requirements.

“Extraordinary Ability” is demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability.

1. Change of Status from J-1 (2 year rule) to O-1 prohibited. Beneficiary is required to depart the U.S. and apply for O-1 at a U.S. Consulate abroad.
2. Petition must include peer group/individual consultation from practitioners in the beneficiary's field.
3. Initial petition period not to exceed three years with assured funding (first time as an O-1 for any employer).
4. Position must require services of a person of extraordinary ability (salary commensurate).

Supporting Documentation Required for O-1 Petition:

Receipt of a major, internationally-recognized award, such as the Nobel Prize or at least three of the following forms of documentation:

Documentation of the alien's receipt of nationally or internationally-recognized prizes or awards for excellence in the field of endeavor;

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which the classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

Evidence of the alien's original scientific, scholarly or business-related contributions of major significance in the field;

Evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media;

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

Evidence that the alien has commanded and now commands a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

TN (Trade NAFTA) North American Free Trade Agreement

TN status is available only to citizens of Canada and citizens of Mexico. Positions held by a TN must be considered professional and must require at least a B.A. for entry level; TNs are required to hold at least a B.A. degree, which was earned in the United States, Canada or Mexico. Exchange Visitors who are subject to the two-year home country residence requirement (212(e)) cannot change their nonimmigrant status from J-1 to TN while in the United States. However, former Exchange Visitors who are subject to 212(e) are eligible to enter the United States under TN status. Each temporary

entry or extension is limited to one year with no clearly defined maximum number of entries or extensions. TN physicians cannot principally practice medicine, but may have patient care activities *incidental* to teaching and/or research. Employment of all TNs is employer specific. TNs cannot have the intent that they want to live in the United States permanently. TNs are liable for Federal tax withholding as nonresidents until they qualify to be taxed at a lower rate under the Substantial Presence Test. However, even as nonresidents, IRS permits TNs to claim dependents as exemptions; TNs are also subject to FICA withholding.

Canadian Citizens

Employers are not required to file petitions with USCIS when TN classification will be determined at a Class “A” Port of Entry at the U.S./Canada border. The prospective TN must show evidence of Canadian citizenship; proof of higher education (diploma, transcripts, etc., with English translation when applicable), licenses, if required; and a letter of appointment or offer letter, which states job title, salary, department, and brief description of work to be performed; and sufficient United States currency to pay the fee at the U.S./Canada border. Canadian citizens are exempt from passport and visa requirements, but the employer’s name is noted by USCIS on the admission document (I-94 card). The FFS office will appreciate receiving a copy of the letter of appointment.

Mexican Citizens

The procedure is exactly the same as though he/she would enter under H-1B. Please discuss with the FFS office prior to preparing “Recommendation for Appointment of Mexican Citizen under TN Visa Status”, copy attached. A maximum of 5,500 Mexican TNs are permitted in the U.S. during any Federal fiscal year.

Mexican TNs require both a passport and TN visa stamp; the visa cannot be issued by a U.S. Consul without prior approval of the Immigration Service pursuant to a Petition filed by an employer. Obtaining prevailing wage determinations and approved Labor Condition Applications by the employer are prerequisite to receiving an approved TN Petition.

MISCELLANEOUS

Employment Authorization Documents

Under a variety of legal grounds, certain individuals are granted temporary employment authorization, which is not employer specific. They are not eligible to claim Tax Treaty benefits and may be subject to FICA withholding. These individuals are required to bring Form I-766 and a letter of appointment or offer letter to FFS who will determine tax-withholding liability.

Employer Sanctions Act

Under the Employer Sanctions law (8 CFR 274a), employers are responsible for determining whether their employees are eligible for employment in the United States by completing an Employment Eligibility Verification Form (I-9). Nonimmigrants must show an appropriate work visa or work authorization document along with a letter of appointment or offer letter in order to be placed on the payroll.

All non-U.S. citizens (except students) are required to check in with the FFS office. The office is responsible for I-9, tax status determination, IRS tax treaty matters, and W-4.

Change of Nonimmigrant Status

Approval of the new status must occur before the expiration date of the old status (example: J-1 to H-1B) for employment to continue without interruption. The employer must suspend employment of the nonimmigrant until approval of the new status is received.

When an employer has filed a timely extension for the same visa status, nonimmigrants are allowed to continue employment for up to 240 days while waiting for a response from USCIS.

Immigrant Petition for Alien Worker (USCIS Form I-140)

Only the Secretary of the Corporation or designee are authorized to sign Form I-140 on behalf of employer Case Western Reserve University. The university offers to petition for Permanent Residence on behalf of all tenure track professors. In these cases, the university handles all of the work necessary for filing the Petition.

It then becomes the responsibility of the employee to file an Application for Permanent Residence. The Application and the University's Petition are sent together to the USCIS Service Center in Lincoln, Nebraska for processing. A Permanent Residence card is valid for a period of ten years and may be renewed at that time.

Taxes

All nonresidents who receive income from U.S. sources are subject to State and Local Tax withholding.

FICA

J-1s and F-1s under most circumstances are exempt from FICA; H-1Bs, O-1s and J-2s are liable.

IRS – Federal Taxes

The issue before IRS is residency: Nonresident Alien for Tax Purposes vs. Resident Alien for Tax Purposes. IRS is not generally concerned with visa status. Thus, IRS may define someone as a Resident Alien for Tax Purposes while USCIS views the same individual as being in the United States temporarily. Contributing factors are days of presence in the United States. Days of presence vary for some nonimmigrant visa classifications.

Nonresident Aliens for Tax Purposes can claim only one personal exemption (except Canadians/Mexicans, and Japanese/S. Koreans under specific situations) and are taxed only on United States-sourced income at the rate of 30 percent withheld by the employer. All J-1s and J-2s are required to file 1040NR annually whether or not they have received income from U.S. sources or whether or not they received tax treaty exemption.

Resident Aliens for Tax Purposes can claim their dependents as tax exemptions, are taxed on worldwide income and are taxed at the same rate as U.S. citizens.

Professors and Researchers – Federal Tax Treaties

The U.S. Treasury Department continues to negotiate new tax treaties with other countries and to renegotiate old treaties. As a result, eligibility for treaty benefits can no longer be assumed by people

who enter the United States for the purpose of teaching and/or conducting research. Each tax treaty is unique; in some cases, requirements for exemption are quite restrictive. Absent tax treaty benefits, Federal Tax must be withheld at the rate of 30 percent.

In addition, IRS will no longer permit employers to make solely in-house determinations. In compliance with IRS regulations, the nonresident for tax purposes is required to complete IRS Form 8233 and possibly a required statement for presentation to the Withholding Agent. If the Withholding Agent accepts it, it must be filed with IRS International. If IRS has not responded after a delay of at least ten days, employers may grant treaty benefits. As of 1-1-2001, employees must have a Social Security or ITIN number to file Form 8233.

If the Withholding Agent issues a check during the above-mentioned ten-day waiting period, we have no choice but to withhold at the rate of 30 percent. If we have not heard from IRS within the ten-day period, tax treaty benefits do go into effect. However, Withholding Agents cannot refund Federal tax previously withheld; the nonresident alien is required to file 1040NR during the first quarter of the following year to request a refund. 1040NRs can be filed from within the United States or from abroad.

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FFS Functions and Responsibilities

- A source of Immigration information for Case staff and faculty.
- Seek communication and cooperation with departments and foreign employees to gather data and documentation in order to analyze the facts and determine the plan of action needed to meet goals.
- Facilitate the Immigration process resulting in the employment of foreign faculty and scholars.
- Employment Eligibility Verification of non-U.S. Citizen employees.
- Determine Tax Status and explain tax information.
- Monitor the employment authorization of foreign faculty and scholars.
- Make application for extension of employment authorization and change of nonimmigrant status.
- Make application for Labor Certification with the Department of Labor and Employment Based Immigration Visa Petition approval with the Immigration and Naturalization Service.
- Direct employees with Visa Petition approvals to the Permanent Residence process. When possible, assist with and review their applications.