

UC Davis Academic Personnel Manual

Recruitment

Section UCD-530, Recruitment and Appointment of Nonresidents

Date: 4/11/2019

Supersedes: 7/14/2015

Responsible Department: Academic Personnel and Services for International Students and Scholars

Source Document: UC APM-530

I. Purpose

This section outlines responsibilities and procedures for the sponsorship of individuals who are neither U.S. citizens nor permanent residents relative to the academic recruitment and appointment process. These procedures also apply to those cases where a nonresident is uniquely qualified for a research position but requires a change in immigration status that will allow temporary or permanent employment (see Policy & Procedure Manual Section 380-14).

II. Definitions

- A. Immigrant (Permanent Resident) — a person who is not a U.S. citizen and who has been lawfully admitted to the U.S. for permanent residence, but who is still a citizen of another country. An immigrant is issued an Alien Registration Card (Form I-551 or "green card") by the U.S. Citizenship and Immigration Services (USCIS).
- B. Nonresident — a person who is not a citizen or permanent resident of the United States. In this document "nonresident" and "international" are synonyms when referring to persons.
- C. Visa — a stamp in the passport that enables the nonresident to enter the U.S. under conditions specified for the visa classification. Visas are issued by a U.S. consulate abroad. Visas do not confirm legal stay or employment eligibility. Such eligibility can only be confirmed by the status granted at the port-of-entry on the I-94 admission record.
- D. Arrival-Departure Record (I-94) —The I-94 Form is a government document that records a traveler's arrival/departure information. Those who need to prove their legal status can download their I-94 form from a U.S. Customs and Border Protection webpage. The I-94 shows a person's entry date, visa class of admission and the period for which the person has been given permission to remain in the U.S.
 - 1. In the case of F-1 and J-1 visa holders, the I-94 will have "D/S" (duration of status), instead of an expiration date.
 - 2. For F-1 and J-1 visa holders, their stay is linked to their I-20 or DS-2019 document expiration date.

III. Responsibilities

As with any recruitment or appointment, all campus search and recruitment requirements must first be satisfied; refer to Section UCD-500, Academic Recruitment Guidelines, or Personnel Policies for Staff Members, Policy 21, Appointment. The nonresident candidate, the hiring department, Services for International Students & Scholars (SISS), the School or College Dean's office, and the Office of the Provost must then work cooperatively to ensure that the campus can benefit from the unique talents and skills of certain nonresident scholars.

- A. The candidate and the recruiting department are responsible for initiating the review of the

candidate's eligibility for an appropriate visa status through consultation with SISS. Once eligibility and status have been determined, the candidate and the department must compile materials, as directed by SISS, that document that the nonresident's credentials and the proffered position meet the requirements for the desired immigration classification in relation to U.S. Department of Labor (DOL), USCIS and Department of Homeland Security (DHS) regulations. The department is also responsible for the preparation of USCIS and DOL applications/petitions, as directed by SISS, as well as for any USCIS filing fees and any expenses (such as long-distance telephone calls, faxes, or express mail charges) incurred by SISS in connection with the case.

- B. The responsibilities of SISS are: to facilitate the University's invitation and employment of international faculty and researchers; to advise the department regarding University and Federal regulations pertaining to the employment of nonresidents; to provide information regarding various visa classifications and employment authorization; to provide instruction and assistance concerning the appropriate application procedures; to monitor the processing of materials by government agencies; and to provide advocacy as necessary. SISS will make the final determination as to the appropriateness of a particular visa classification, petition, or strategy.
- C. Upon receipt from the department of the requested documentation, SISS will provide government authorities with sworn certification on behalf of the University. All actions will be within the framework provided by the letter and the spirit of State and Federal laws.

IV. International Scholar Fee-For-Service

- A. Fees designed to cover a portion of the cost of professional services provided by SISS will be charged to the academic department or program that hosts or hires the international faculty member or researcher where official visa documents or immigration petitions are required. These fees do not apply to individuals who qualify to come to UC Davis in the B-1, or WB status.
- B. Fees are assessed for: the DS-2019 document required for initial or extension of J-1 status; the petition for approval of initial, extension or amendment of E-3, H-1B, O-1 or TN status; or when a petition is filed for permanent residence through employment at UC Davis, either by SISS or in conjunction with University-approved outside counsel, coordinated by SISS. Fees charged to departments also cover advising of department faculty and staff on immigration issues, as well as advising for current and potential international scholars, orientations for J-1 scholars, and other programs and services offered to international scholars through SISS. Information on current recharge fees can be found at <http://siss.ucdavis.edu/>.
- C. Departments must pay all fees, including SISS recharge fees and USCIS fees, related to petitions filed for international scholars at UC Davis who will be sponsored for E-3, H-1B, O-1, and TN status, as well as for those who seek an approved I-140 to qualify for permanent residence. International faculty, staff and researchers who gain an approved I-140 through a permanent resident petition sponsored by the University can be expected to pay for USCIS fees related to adjustment of status to permanent resident, which is the final step in gaining permanent residence (this includes form I-485 for adjustment of status and any attorney fees). All other fees must be paid by the department; requiring reimbursement from international scholars in the above categories in any form is not allowed by either USCIS or University policy.
- D. Departments must pay all recharge fees directly to SISS for requesting a DS-2019 for new or continuing J-1 status in an international scholar category. However, departments may create internal policies regarding requesting reimbursement of the recharge fee from J-1 international scholars, with the exception of scholars in a Postdoc title, upon their entry to the US.

- E. University departments are not responsible for any fees related to petitions filed for dependent family members, including family members in the E-3D, H-4, J-2, O-3 or TD visa categories.

V. Time Frame

Departments must allow sufficient time for processing visa applications, petitions, or immigration applications. Procedures should begin at least 2 months in advance for DS-2019 requests, at least 6 months in advance for H-1B visa applicants, and as far in advance as possible for applicants seeking permanent residence. Obtaining an immigrant visa or permanent resident status may take from 6 months to 2 years, depending on individual circumstances.

VI. Permanent Employment of Nonresidents (Immigrant Status)

UC Davis sponsorship for permanent resident status may be sought for a nonresident who is proposed for permanent UC Davis employment.

- A. In order to qualify for University sponsorship for legal permanent resident status, the proffered position must be full-time and permanent, meet the prevailing wage standard, and require professional skills. Tenured or tenure-track faculty positions—including Lecturers with Security of Employment (LSOE) and Lecturers with Potential Security of Employment (LPSOE)—normally meet these requirements. Positions that do not qualify for such sponsorship include postgraduate researchers, visiting postdoctoral scholars, and lecturers (excluding LSOE and LPSOE). In addition, only those positions directly engaged in teaching or research will be sponsored.
- B. To establish that a grant-funded research position may be considered permanent for the purpose of sponsorship for permanent residence, the following conditions must be met:
 1. Funding to support the position must be available for at least 3 years.
 2. There must be a reasonable expectation that the funding will be renewed beyond the 3-year maximum.
 3. The department must intend to continue to employ the nonresident for more than 3 years (assuming funding).
 4. The nonresident must intend to remain at UC Davis for more than 3 years.
- C. University sponsorship includes the assistance of SISS to the academic department in the preparation and filing of a labor certification and/or permanent visa petition with the State Employment Development Department (EDD), Department of Labor (DOL), and USCIS, and to the nonresident and her/his accompanying immediate family members in the preparation of documents for applications to adjust status to legal permanent resident. SISS will represent the University in all legal matters related to immigration situations. Private immigration attorneys will not be authorized to represent the University in any situation, and individual faculty and department representatives should not sign immigration petitions, attorney authorizations, or letters to USCIS without consulting SISS
- D. Procedures: All procedures, forms and instructions to initiate immigration processes can be found on the SISS website at <http://siss.ucdavis.edu/>. Departments should contact the relevant advisor listed on the SISS staff webpage.

VII. Temporary Employment of Nonresidents (Nonimmigrant Visa)

SISS provides support to departments hosting a nonresident who is proposed for a visiting or temporary appointment. The right to temporarily live and engage in employment in the U.S. as a nonresident is relatively simple to obtain for qualified persons. When permanent residence is a goal, however, one temporary visa classification may be more appropriate than another, and the situation should be fully discussed with SISS before proceeding with the initial temporary invitation.

1. An H-1B nonimmigrant visa petition will be filed by the University only for temporary faculty positions or for those professional research positions that are full-time, i.e., 100% appointments. When there is an interest in subsequently pursuing permanent employment and permanent resident status for the individual, it is particularly appropriate to use the H-1B status, which accommodates this "dual intent," rather than the J-1 status, which is specifically restricted to temporary appointments.
2. The J-1 Exchange Visitor Visa is appropriate for appointments of visiting faculty, researchers, or specialists (experts in a field of specialized knowledge or skills invited to UC Davis for the purpose of observing, consulting, or demonstrating their special skills). Some of these visiting researchers may be students in their home countries, coming to UC Davis to engage in research.
3. SISS recommends that all visiting nonresident scholars receive an appropriate academic appointment given their position or purpose at UC Davis. An appropriate appointment will facilitate obtaining necessary or useful campus services for the visiting scholar.

Information on these and other nonimmigrant visa classifications most commonly used by campus departments can be found on the SISS website. The B-1/WB business visitor status is not appropriate for employment; information about permitted activities is also listed on the SISS website.

VIII. References and Related Policies

- A. Office of the President: UC Group Insurance Regulations.
- B. Academic Personnel Manual Sections 500 (Recruitment/General), 530 (Recruitment/Nonresidents), and UCD-500, Academic Recruitment Guidelines.
- C. Personnel Policies for Staff Members, Policy 21, Appointment.
- D. Policy & Procedure Manual:
 1. Section 380-06, Employment Eligibility Authorization.
 2. Section 380-14, Employment of Aliens (Nonimmigrants).
 3. Section 380-76, Honoraria and Other Additional Compensation.